GOVERNMENT OF PUDUCHERRY

LABOUR DEPARTMENT

(G.O. Rt. No. 68//Lab./AIL/J/2013, dated 17th May 2013)

NOTIFICATION

Whereas, an award in I.D.No. 13/2012, dated 24-1-2013 of the Labour Court, Puducherry in respect of the industrial dispute between the Managing Director, M/s. Pondy Die Castings (P) Ltd., Puducherry and its workman Thiru N. Kathirvelu, over his non-employment has been received;

Now, therefore, in exercise of the powers conferred by sub-section (1) of section 17 of the Industrial Disputes Act, 1947 (Central Act XIV of 1947) read with the notification issued in Labour Department's G. O. Ms. No. 20/91/Lab./L, dated 23-5-1991, it is hereby directed by Secretary to Government (Labour) that the said award shall be published in the official gazette, Puducherry.

(By order)

S. Thammu Ganapathy,
Under Secretary to Government (Labour).

BEFORE THE LABOUR COURT AT PUDUCHERRY

Present : Thiru T. Mohandass. M.A, M.L.,
Presiding Officer, Labour Court.

Thursday, the 24th day of January, 2013.

I.D. No. 13/2012

N. Kathirvelu . . Petitioner

Vs.

The Managing Director,
Pondy Die Castings (P) Limited.
Puducherry. . . Respondent

This industrial dispute coming on 18-1-2013 before me for final hearing in the presence of Thiru R.T. Shankar, Advocate for the petitioner, Tvl. T.S.P. Sridhar Babu and S. Jayachandiran, Advocate for the respondent, upon hearing both sides, upon perusing the case records, after having stood over for consideration till this day, this court passed the following :

AWARD

The petitioner has filed a case before the Conciliation Officer as against the dismissal order passed by the respondent and since the said case has not been disposed off within 45 days, this industrial dispute is filed by the petitioner before this court under Section 2 A of Industrial Disputes (Amendment) Act, 2010 (24 of 2010).

2. The petitioner in his petition has stated as follows:-

The petitioner was working as Accounts Assistant in the respondent company from 27-10-2003. The petitioner demanded a good salary for his livelihood, but the respondent management refused to increase his salary and they have taken steps to remove him from service. As such the petitioner was transferred from the Accounts Department to Dispatch Department. But the petitioner without any protest worked in the Dispatch Department. At this stage, the respondent sent an enquiry letter No.1 stating that the management is suspected that he has involved in the commission of theft and in order to find out the truth, they decided to conduct the domestic enquiry and he has suspended from 22-7-2010. In the said letter, there are no particulars with regard to the following aspects:

1. From whom the complaint was received with regard to the alleged theft.

2. When and where the petitioner has committed theft.

3. Who is the eye-witness for the said alleged theft?

4. Why the said theft material has been seized by the security person from the petitioner?

5. Whether any complaint has been given to the police station with regard to the said theft?

6. No reason was stated in the alleged notice for the delay in taking steps against the petitioner?

After receiving the said notice, the petitioner sent several letters to the respondent, asking about various particulars, (for which the respondent had sent reply formally only to escape from the clutches of law). Then as requested by the petitioner, the enquiry was conducted by appointing one Suresh as enquiry officer and the enquiry has been completed only for the period of one day. In the enquiry there is no witness appeared before the enquiry officer and no documents were marked to prove the alleged theft. Further the enquiry officer has not furnished the enquiry report even after several demands made by the petitioner. Hence, the enquiry conducted by the enquiry officer is against the principles of natural justice. Hence, this industrial dispute is filed by the petitioner for his reinstatement along with other relief.

3. The respondent in his counter has stated as follows:

On 17-11-2004 the petitioner was placed in Grade -IV for a monthly salary of ₹ 3,079. The petitioner was irregular in his service without prior information of his absence to the respondent. Hence, on 27-11-2008 the respondent has suspended the petitioner for seven days from 27-11-2008 to 3-12-2008 and called for his explanation. The petitioner gave his explanation on 3-12-2008 and assured that in future it will not happen and prior intimation will be given through leave letter.

Again the petitioner's performance was not satisfied by the respondent and he was allocated with certain jobs on 10-2-2010, but he did not accurate in the said job. Hence, the respondent called for his explanation on 6-4-2010 about his non-performance of the work timely and taking more leave by neglecting the work. The petitioner submitted his explanation on 9-4-2010 by admitting that his frequent leave taking because of his health condition. Hence, the petitioner was suspended from 14-4-2010 to 16-4-2010 for three days.

Then the petitioner was transferred to Dispatch Department from 4-5-2010 due to his poor performance. The complaints were received from the employees namely Anandan and Sakthivel that they have seen the petitioner carrying casting in his tiffin box on 6-7-2010 and one J.P. Prakash G.D.A. has also informed the respondent about commission of theft made by the petitioner. Therefore, the respondent issued the suspension order on 22-7-2010 and informed about conducting the domestic enquiry to find out the truth. On 28-12-2010 the respondent issued a charge sheet and on 12-2-2011 one Suresh, Advocate was appointed as enquiry officer to conduct the enquiry and on repeated adjournments, the enquiry was conducted on 12-3-2011 and the respondent examined one Anandan and the petitioner examined one Velan and both witnesses were cross examined by the respondent and the petitioner respectively. On 16-3-2011 the enquiry officer submitted his report stating that the charges were proved and on 11-4-2011 the respondent issued a show cause notice to the petitioner. On 23-4-2011 the petitioner gave his explanation and finally on 3-5-2011 the respectively terminated the petitioner from service with effect from 2-5-2011. Therefore, all the proceedings were done as per law and hence the respondent prays for dismissal of the industrial dispute.

4. On the side of the petitioner, PW.1 was examined and Ex.P1 to Ex.P15 were marked. On the side of the respondent, RW.1 was examined and Ex.R1 to Ex.R27 were marked.

5. *The point for consideration is:*

Whether the industrial dispute can be allowed?

6. *On the point:*

The contention of the petitioner is that he was working as Accounts Assistant in the respondent company from 27-10-2003 and he demanded a good salary for his livelihood, but the respondent management refused to increase his salary and they have taken steps to remove him from service and as such he was transferred from the Accounts Department to Dispatch Department and then the respondent sent an enquiry letter No.1, stating that the management is suspected that he has involved in the commission of theft and in order to find out the truth, they decided to conduct the domestic enquiry. In order to prove his claim, the petitioner examined himself as PW.1. PW.1 in his evidence has deposed as stated in the claim statement.

7. *Per contra,* the contention of the respondent is that on 17-11-2004 the petitioner was placed in Grade-IV for a monthly salary of ₹ 3,079 and he was irregular in his service without prior information of his absence to the respondent and hence, on 27-11-2008 they have suspended the petitioner for seven days from 27-11-2008 to 3-12-2008 and called for his explanation and the petitioner gave his explanation on 3-12-2008 and assured that in future it will not happen and prior intimation will be given through leave letter. The respondent further contended that again the petitioner's performance was not satisfied by them and he was allocated with certain jobs on 10-2-2010, but he did not accurate in the said job and hence, they called for his explanation on 6-4-2010 about his non-performance of the work timely and taking more leave by neglecting the work and the petitioner submitted his explanation on 9-4-2010 by admitting that his frequent leave taking because of his health condition and hence, the petitioner was suspended from 14-4-2010 to 16-4-2010 for three days and then the petitioner was transferred to Dispatch Department from 4-5-2010 due to his poor performance.

8. In order to prove his claim, the H.R. Manager of the respondent company was examined as RW.1. RW.1 has marked the letter submitted by the petitioner to the respondent as Ex.R1. A perusal of Ex.R1 reveals that for suspension of seven days from 27-11-2008 to 3-12-2008, he gave explanation stating that out of five days leave, he informed three days leave through oral communication to his HRD and Director over phone and for two days leave, he could not inform the management, since his wife was admitted in the hospital. Ex.R2 is the authorisation letter. Ex.R3 is the copy of the suspension order for seven days from 27-11-2008 to 3-12-2008. Ex.R4 is the copy of the acknowledgment card signed by the petitioner. Ex.R5 is the copy of the warning letter issued by the respondent to the petitioner for his non-performance. Ex.R6 is the copy of the explanation for Ex.R5 submitted by the petitioner to the respondent. Ex.R7 is the copy of the suspension order issued to the petitioner for his misbehaviour with the Finance Manager. Ex.R8 is the copy of the apology letter submitted by the petitioner for his misbehaviour with the said Finance Manager. Ex.R9 is the copy of the transfer order issued to the petitioner. Ex.R1 to Ex.R9 would confirm the version of RW.1 as stated above. But it is the duty of the respondent to give 9-A notice to the petitioner before transferring him to some other department. But in this case, though the respondent has not issued notice under section 9-A of Industrial Dispute Act to the petitioner, he obeyed the order of the respondent and worked in the transferred place and the same was admitted by RW.1 in his cross-examination. The relevant portion of his evidence runs as follows:

"பணி மாற்றம் செய்வதற்கு முன்பு 9-ஏ அறிவிப்பு கடிதம் எதுவும் கொடுக்கவில்லை. பணி மாற்றம் செய்தபிறகு மனுதாரர் அங்கும் பணி செய்து வந்தார். என்றால் சரிதான்."

9. The reason for terminating the petitioner, as per the version of RW.1 is that the complaints were received from the employees namely Anandan and Sakthivel that they have seen

the petitioner carrying casting in his tiffin box on 6-7-2010 and one J.P. Prakash G.D.A. has also informed the respondent about commission of theft made by the petitioner and therefore, the respondent issued the suspension order on 22-7-2010 and informed about conducting the domestic enquiry to find out the truth and on 28-12-2010 the respondent issued a charge-sheet and on 12-2-2011.

10. The charge-sheet, dated 22-7-2010 issued to the petitioner was marked as Ex.P1 on the side of the petitioner and Ex.R10 on the side of the respondent. In Ex.P1 and Ex.R10, it has been stated that the management is suspected that the petitioner has involved in the commission of theft on 6-7-2010 and in order to find out the truth, the management is decided to conduct the domestic enquiry and he was suspended with effect from 22-7-2010 and he was directed to give the explanation within 24 hours, failing which action will be taken based on the evidence. The contents of Ex.P1 and Ex.R10 are as follows:-

"தாங்கள் கடந்த 6-7-2010 அன்று திருட்டு செயலில் ஈடுபட்டதாக நிர்வாகத் தரப்பில் தங்கள்மேல் சந்தேகம் எழுந்துள்ளது. மேலும் நமது தொழிற்சாலையில் ஏற்கனவே இது மாதிரி குற்றங்கள் நடந்து, அதற்கு நிர்வாகம் நடவடிக்கை எடுத்துள்ளது என்பதை நீர் அறிவீர். இருந்தும் நீர் இது போன்ற நடவடிக்கைகளில் ஈடுபட்டுள்ளீர்.

மேற்படி தங்கள் மீது சுமத்தப்பட்டுள்ள குற்றச்சாட்டுகளின் உண்மை நிலையை அறிய உள்விசாரணை நடத்த உத்தேசிக்கப்பட்டுள்ளது.

இதற்காக 22-7-2010 அன்று முதல் தங்களை தற்காலிக பணி நீக்கம் செய்யப்பட்டு, மேற்கொண்டு உங்களுடைய விளக்கம் இந்த கடிதம் பெற்று 24 மணி நேரத்திற்குள் எழுத்து மூலம் தரவேண்டும் என்று கோரப்படுகிறது. அவ்வாறு தவறும் பட்சத்தில் கையில் உள்ள ஆவணங்களின் அடிப்படையில் மேல் நடவடிக்கை எடுக்கப்படும் என அறியவும்."

From the above contents, it can be seen that there are no particulars with regard to the name of the person, who informed about commission of theft by the petitioner, name of the product, theft by the petitioner, what time and where the petitioner has committed theft. RW.1 in his cross-examination has admitted the said facts as follows:-

ம.சா.ஆ.1ல் மனுதாரர் என்ன குற்றம் புரிந்தார் ? யார் அந்தக் குற்றத்தினை பார்த்து சொன்னார்கள் என்று குறிப்பிடப்பட்டுள்ளதா என்றால் இல்லை.

Further as per Ex.P1 (Ex.R10), the alleged theft was committed by the petitioner on 6-7-2010, whereas the charge-sheet has been issued on 22-7-2010. There is no plausible explanation from the respondent with regard to delay in taking action against the petitioner. As per the version of RW.1, they were informed about commission of theft by the petitioner through the employees namely Anandan, Sakthivel and Prakash. But the names of any such persons have been mentioned in Ex.P1 (Ex.R10). Hence, the charge sheet under Ex.P1 (Ex.R10) is vague and devoid of necessary particulars.

11. Further contention of learned counsel for the petitioner is that the enquiry officer did not conduct the enquiry in accordance with law and principles of natural justice and the enquiry officer acted in a biased manner and the concept of fair opportunity of hearing was grossly violated.

12. *Per contra,* the contention of the learned counsel for the respondent is that the enquiry officer has meticulously followed the principles of natural justice in conducting the enquiry but for reasons best known to him, the petitioner has not made use of the reasonable and adequate opportunities afforded to him by the enquiry officer.

13. On the side of the respondent, the docket sheet of the enquiry proceedings was marked as Ex.R 21 and the copy of the enquiry report was marked as Ex.R 22. A perusal of Ex.R 21 reveals that on 26-2-2011 both the petitioner and the representative of the respondent were appeared before the enquir officer and requested time for enquiry and hence the enquiry was adjourned to 5-3-2011 and on 5-3-2011 both the petitioner and the said representative requested time for enquiry and hence the enquiry was adjourned to 12-3-2011 and on 12-3-2011 the enquiry was conducted and one Anandan was examined on the side of the respondent. The said Anandan told that he has given a letter to the management on 10-7-2010 stating that the petitioner has committed theft of aluminium castings in his tiffin box and he was cross examined by the petitioner. On the side of the petitioner, one Velan was examined and he has stated that the charges levelled against the petitioner are false and on the same day, the enquiry was concluded by the enquiry officer.

14. In the enquiry, the management witness Anandan has stated that he has given letter to the respondent about commission of theft made by the petitioner. But the said letter has not been produced and marked in the enquiry. Further the respondent has stated that they came to know about commission of theft made by the petitioner through one Sakthivel and J.P. Prakash. But the said Sakthivel and J.P. Prakash have not been examined as witnesses in the said enquiry. Further the enquiry officer conducted the enquiry only one day and no opportunity was given to the petitioner to examine the further witnesses on his side. The enquiry officer has come to the conclusion only based on their only witness without marking any documents that the charges levelled against the petitioner were proved, which is not quite reasonable. The enquiry officer has not furnished the enquiry report even after several demands made by the petitioner and the second show cause notice has also not been sent to the petitioner, before terminating him from service and the same has been admitted by RW.1 in his cross-examination. The relevant portion of his evidence is as follows:-

"P.11-ல் விசாரணை அறிக்கை நகல் மனுதாரர் கோரியிருந்தார். விசாரணை அதிகாரியும் அந்த விசாரணை குறிப்பு நகலை தரவில்லை. . . . . . .

. . . விசாரணை குறிப்புகளை பலமுறை கேட்டும் தராததால் சட்ட விரோதமாக செயல்பட்டோம் என்றால் சரியல்ல . . . . . .

மேலும் இரண்டாவது காரணம் கோரும் அறிக்கையுடன் விசாரணை குறிப்பு, விசாரணை அதிகாரியின் முடிவு ஆகியவற்றையும் தராதது சட்ட விரோதம் என்றால் சரியல்ல.''

From the above evidence of RW.1, it is clearly proved by the petitioner that the respondent has failed to send the enquiry report to the petitioner even after several demands made by him and they also not send the second show cause notice before terminating him from service, which is against the labour law. In this regard, the learned counsel for the petitioner has submitted that when the respondent has failed to give sufficient opportunity to the petitioner in the enquiry and send the enquiry report to him, the impugned order passed by the respondent, terminating him from service is liable to be *set aside.* In order to support his claim, he relied upon the following decision:-

2009(4) MLJ Page 1216:

"Tamil Nadu Cooperative Societies Rules (1988), rule 149 (18) (b) - Dismissal from service - Impugned order passed in Writ Petition - Writ Appeal 2nd respondent has neither furnished copy of enquiry officer's report nor afforded an opportunity for personal hearing to the appellant to defend himself as required under rule - Said rules substantive in nature and not procedural - Not furnishing of copy of enquiry officer's report and failure to afford personal hearing would have certainly caused serious prejudice - Impugned order *set aside* - Writ Appeal allowed."

As already stated the respondent has not furnished the enquiry report, which had resulted in miscarriage of justice decision making process was not only fault but biased and established that the decision was predetermined and hence the said enquiry is not fair and proper.

15. The learned counsel for the petitioner has also submitted that as per section 3 of Subsistence Allowance Act, the respondent has not paid the subsistence allowance to the petitioner, which is illegal and against the Subsistence Allowance Rules.

16. As per section 3 of Payment of Subsistence Allowance Act, an employee, who is placed under suspension, shall during the period of such suspension be entitled to receive, payment from the employer as subsistence allowance, an amount equal to fifty-percent of the wages, which the employee was drawing immediately before his suspension, for the first ninety days reckoned from the date of such suspension, provided that where the period of suspension exceeds ninety days, but does not exceed one hundred and eighty days, the employee shall be entitled to receive, after the said period of ninety days, a subsistence allowance equal to seventy five percent of the wages, which the employee was drawing immediately before his suspension. But in this case, the respondent has not filed any document to prove that they have, paid the subsistence allowance as per the above provision of law. In fact RW.1 in his cross examination has admitted that they have paid 50% of subsistence allowance for six months only. The relevant portion of his evidence is as follows:-

''பணியிடை நீக்க காலத்தில் 6 மாத காலம் 50% பிழைப்பூதியம் மட்டுமே மனுதாரருக்கு கொடுத்துள்ளோம் எனறால் சரிதான்.''

RW.1 has also admitted in his cross examination that they have deducted ₹ 1,000 from the said 50% of subsistence allowance. The relevant portion of his evidence is as follows:

''அந்த 50% பிழைப்பூதியத்திலும் அவர் பெற்ற முன் பணத்திற்கு என்று மாதம் ₹ 1,000 பிடித்தம் செய்தோம் எனறால் சரிதான்.''

As per sub-rule (ii) of rule 3 of Subsistence Allowance Rules, the subsistence allowance payable under the Act shall be paid in full subject to the restrictions under the act and it shall not be liable for any deductions. The respondent has not filed any document to prove that the petitioner has availed the advance from the respondent and that they have deducted ₹ 1,000 per month from the said subsistence allowance. It is pertinent to refer the following decision, which is relevant to this case:-

2002(3) L.L.N. 327 :

Management Medical Superintendent, Christian Mission Hospital, Madurai Vs. Presiding Officer, Labour Court, Madurai and another:

"Domestic enquiry - Attender in hospital, served with charge memo - No subsistence allowance paid to him till final order was passed about 10 years later - He went before concerned authority under Payment of Subsistence Allowance Act -Though a direction was given to employer to pay subsistence allowance, nothing came to be paid - It is also admitted position that against that order an appeal was filed and the appeal was dismissed and yet no subsistence allowance was paid - Held, the whole enquiry is vitiated and rendered non est as per the established law laid down by Apex Court - The workman's civil suit was pending has got nothing to do with payment of subsistence allowance."

As per the above decision, when no subsistence allowance is paid by the employer, the whole enquiry is vitiated. In this case, as already stated, the respondent has not acted in accordance with law in paying the subsistence allowance to the petitioner. Hence, the order of termination issued by the respondent is bad in law and is liable to be *set aside* and consequently he is entitled for reinstatement with continuity of service. However, considering the facts and circumstances of the case, the petitioner is entitled for 50% of back wages and other attendant benefits. Accordingly, this point is answered.

17. In the result, the industrial dispute is partly allowed and the respondent is directed to reinstate the petitioner into service with continuity of service and with 50% of back wages and other attendant benefits.

Typed to my dictation, corrected and pronounced by me in the Open Court on this the 24th day of January, 2013.

T. MOHANDASS
Presiding Officer,
Labour Court, Puducherry.

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List of petitoner's witness:

PW.1 - 19-10-2012 - N. Kathirvelu

List of petitioner's exhibits:

Ex.P1 — Enquiry letter No.1 issued to the petitioner, dated 22-7-2010.

Ex.P2 — Copy of the letter sent by the petitioner to the respondent, dated 28-7-2010.

Ex.P3 — Enquiry letter No.2 issued to the petitioner, dated 30-7-2010.

Ex.P4 — Enquiry letter No.3 issued to the petitioner, dated 24-8-2010.

Ex.P5 — Copy of the letter sent by the petitioner to the respondent, dated 3-9-2010.

Ex.P6 — Charge sheet, dated 28-12-2010 issued to the petitioner.

Ex.P7 — Copy of the letter, dated 7-1-2011 sent by the petitioner to the respondent.

Ex.P8 — Letter, dated12-2-2011 sent by the respondent to the petitioner.

Ex.P9 — Enquiry Notice, dated 19-2-2011 sent to the petitioner.

Ex.P10 — Letter, dated 9-4-2011 sent by the respondent to the petitioner.

Ex.P11 — Copy of the letter, dated 23-4-2011 sent by the petitioner to respondent.

Ex.P12 — Termination order, dated 3-5-2011.

Ex.P13 — Letter, dated 20-5-2011 sent by the petitioner to the respondent.

Ex.P14 — Letter, dated 1-6-2011 sent by the petitioner to the respondent.

Ex.P15 — Notice of enquiry, dated 24-6-2011

List of respondent's witness :

RW1 — 6-12-2012 - R. Sivaraj, HR Manager

List of respondent's exhibits:

Ex.R1 — Letter, dated 3-12-2008 sent by the petitioner.

Ex.R2 — Authorisation letter, dated 5-12-2012

Ex.R3 — Copy of the letter issued by the respondent to the petitioner, dated 27-11-2008.

Ex.R4 — Copy of the acknowledgment card

Ex.R5 — Copy of the letter by the respondent to the petitioner dated 6-4-2010.

Ex.R6 — Copy of the letter issued by the petitioner, dated 9-4-2010.

Ex.R7 — Copy of the letter issued by the respondent, dated 13-4-2010.

Ex.R8 — Copy of the letter issued by the petitioner, dated 14-4-2010.

Ex.R9 — Copy of the letter issued by the respondent, dated 30-4-2010.

Ex.R10 — Copy of the letter issued by the respondent, dated 22-7-2010.

Ex.R11 — Copy of the letter issued by the petitioner, dated 28-7-2010.

Ex.R12 — Copy of the letter sent by the respondent, dated 31-7-2010.

Ex.R13 — Copy of the acknowledgment card

Ex.R14 — Copy of the letter sent by the respondent, dated 26-8-2010.

Ex.R15 — Copy of the letter sent by the petitioner, dated 3-9-2010.

Ex.R16 — Copy of the charge-sheet issued to the petitioner, dated 30-12-2010.

Ex.R17 — Copy of the acknowledgement card

Ex.R18 — Copy of the letter sent by the respondent, dated 12-2-2011.

Ex.R19 — Copy of the acknowledgement card

Ex.R20 — Copy of the letter sent by the Enquiry Officer, dated 19-2-2011.

Ex.R21 — Copy of the enquiry officer's docket sheet

Ex.R22 — Copy of the enquiry report, dated16.3.2011

Ex.R23 — Copy of the letter sent by the respondent, dated 11-4-2011.

Ex.R24 — Copy of the acknowledgement card

Ex.R25 — Copy of the letter issued by the respondent, dated 3-5-2011.

Ex.R26 — Copy of the acknowledgement card

Ex.R27 — Copy of the letter issued by the petitioner, dated 8-11-2010.

T. MOHANDASS,
Presiding Officer,
Labour Court, Puducherry.

GOVERNMENT OF PUDUCHERRY

LABOUR DEPARTMENT

(*G.O. Rt. No. 69/Lab./AIL/J/2013, dated 17th May 2013)*

NOTIFICATION

Whereas, the award in I.D. No. 19/2012, dated 31-1-2013 of the Labour Court, Puducherry in respect of the industrial dispute between the Managing Director, M/s. SISCO Latex (Private) Limited, Puducherry and its workman R. Suganthi over her non-employment has been received;

Now, therefore, in exercise of the powers conferred by sub-section (1) of section 17 of the Industrial Disputes Act, 1947 (Central Act XIV of 1947) read with the notification issued in Labour Department's G.O.Ms.No.20/91/Lab./L, dated 23-5-1991, it is hereby directed by Secretary to Government (Labour) that the said award shall be published in the official gazette, Puducherry.

(By order)

S. Thammu Ganapathy,
Under Secretary to Government (Labour).

BEFORE THE LABOUR COURT AT PUDUCHERRY

Present : Thiru T. Mohandass, M.A. M.L.,
Presiding Officer, Labour Court.

Thursday, the 31st day of January 2013

I.D. No. 19/2012

R. Suganthi . . Petitioner

Versus

The Managing Director,
SISCO Latex (Private) Limited,
Puducherry. . . Respondent

This industrial dispute coming on 24-1-2013 for final hearing before me in the presence of Thiru R.T. Shankar, Advocate for the petitioner, Thiru J.A.S. Satish Kumar, Advocate for the respondent, upon hearing both sides, upon perusing the case records, after having stood over for consideration till this day, this court passed the following:

AWARD

The petitioner has filed a case before the conciliation officer as against the dismissal order passed by the respondent and since the said case has not been disposed off within 45 days, this industrial dispute is filed by the petitioner before this court under section 2A of Industrial Disputes (Amendment) Act, 2010 (24 of 2010).

2. The petitioner in her petition has stated as follows:-

The petitioner was working as permanent employee in the respondent company since 3-3-2008. She is an active member in SISCO Latex Thozhilalargal Sangam. The respondent management sent a vague letter to the petitioner, dated 13-1-2012 for the alleged absent from 9-1-2012 to 13-1-2012 for five days. But the petitioner availed the medical leave from 29-12-2011 to 5-1-2012 and accordingly she submitted the same under ESI form.

After receiving the said letter, dated 13-1-2012, the petitioner went to the respondent company to meet the Personnel Manager and requested him to extend the leave for further one week, but the said Personnel Manager shouted her by stating that he will not give any leave and he terminated her from service from today itself. On the next day, the petitioner went to the office with fear, but she was not permitted to enter into the factory premises and hence she returned back to her house. Then on 24-1-2012, the respondent sent a dismissal order to the petitioner. The order of dismissal is invalid and unlawful, since no show cause notice and charge sheet issued to the petitioner and also no enquiry was conducted. The respondent has also not sent the second show cause notice before terminating her from service. Hence she filed the present industrial dispute.

3. The respondent in his counter has stated as follows:-

The petitioner was on leave from 27-12-2011 till, 8-1-2012, but she submitted the ESI leave from only on 7-1-2012 that too for the period from 29-12-2011 to 5-1-2012. She stated that she would join duty on 8-1-2012. Though she was supported to have reported for duty at least on 9-1-2012, she failed to join on that date. The petitioner never reported for duty after that and remained absent. Hence, they issued a show cause notice, dated 13-1-2012 to the petitioner calling upon her to submit her explanations for her unauthorised absence from 9-1-2012 within two days from the date of receipt of that notice. In pursuance of the said show cause notice, there was no response from the petitioner. After having waited for ten days on 24-1-2012, the termination order was sent to the petitioner with effect from 24-1-2012 for her unauthorised absence from 9-1-2012.

This respondent deny that the act of the management in terminating the petitioner is in contravention of section 33(2)(b) of Industrial Disputes Act. It is a fact that a dispute regarding revision of wages, annual increment and several other demands was raised by SISCO Latex Employees'

Union before the Labour Conciliation Officer, Puducherry in I. D. No.2766/11/LO(C)/AIL. However the petitioner can under no circumstances be construed as a workman concerned in the dispute within the meaning of section 33 in order to sustain this petition. The features of the dispute raised by the union and the features of the present dispute raised by the petitioner in this petition are not common. Hence, section 33(2)(b) of Industrial Disputes Act is not applicable to this case. In the above circumstance, this petition is frivolous, not maintainable and deserves to be dismissed *in limine*.

4. On the side of the petitioner, PW1 & PW2 were examined and Ex.P1 to Ex.P7 were marked. On the side of the respondent, RW1 & RW2 were examined and Ex.R1 to Ex.R3 were marked.

5. *The point for consideration is:*

Whether the industrial dispute can be allowed?

6. *On this point:*

The contention of the petitioner is that she was working as permanent employee in the respondent company since 3-3-2008 and she was an active member in SISCO Latex Thozhilalargal Sangam and the respondent management sent a vague letter to her, dated 13-1-2012 for the alleged absent from 9-1-2012 to 13-1-2012 for five days, but she availed the medical leave from 29-12-2011 to 5-1-2012 and the leave application for the said period was sent to the respondent management. The petitioner further contended that after receiving the said letter, dated 13-1-2012, she went to the respondent company to meet the Personnel Manager and requested him to extend the leave for further one week, but the said Personnel Manager shouted her by stating that he will not give any leave to her and he terminated her from service from today itself and then on 13-2-2012 the respondent sent a dismissal order to her.

7. In order to prove her case, the petitioner examined himself as PW.1. PW.1 has deposed before this court as stated in her claim statement and marked Exs. P1 to Ex.P7.

8. *Per contra*, the contention of the respondent is that the petitioner was on leave from 27-12-2011 till 8-1-2012, but she submitted the E.S.I. leave from only on 7-1-2012 that too for the period from 29-12-2011 to 5-1-2012 and she stated that she would join duty on 8-1-2012 and though she was supposed to have reported for duty at least on 9-1-2012, she failed to join on that date and she never reported for duty after that and remained absent and hence, they issued a show cause notice, dated 13-1-2012 to the petitioner calling upon her to submit her explanations for her unauthorised absence from 9-1-2012 within two days from the date of receipt of that notice and in pursuance of the said show cause notice, there was no response from the petitioner and after having waited for ten days on 24-1-2012 the termination order was sent to the petitioner with effect from 24-1-2012 for her unauthorised absence from 9-1-2012. RW.1 has marked the letter sent by them to E.S.I. Corporation as Ex.R1 and the reply sent by the E.S.I. Corporation to the respondent as Ex.R2. As per Ex.R2, the petitioner has not submitted any medical-*cum*-leave certificate after 9-1-2012 to their office.

9. There is no dispute the petitioner was an employee under the respondent company and she has taken medical leave from 29-12-2011 to 5-1-2012, as could be seen from the copy of the E.S.I. benefit payment docket under Ex.P7. Ex.P1 is the show cause notice, dated 13-1-2012 issued by the respondent to the petitioner. As per Ex.P1, the petitioner has been given notice of show cause as to why disciplinary action should not be taken against her for the unauthorised absent from 9-1-2012.

10. According to PW.1, on receipt of the show cause notice under Ex.P1, she went to the respondent company and met the Personnel Manager Thiru Sakthivel and requested him for her extension of medical leave for further one week, but the said Sakthivel has not given the leave and stated that he terminated her from service.

11. The learned counsel for the respondent that at no point of time, the petitioner met the Personnel Manager Thiru Sakthivel as stated by the petitioner and hence, the contention of the petitioner that he shouted the petitioner by using filthy language is falsehood. In support of the said contention, the security officer of the respondent company was examined as RW.2. RW.2 in his evidence has deposed that there is one main entrance which is used by all workers and visitors, entering the factory premises of the respondent company and on perusal of visitors note regarding entries of the visitors/workers, it is seen that the petitioner has not entered the factory premises from 1-1-2012 to 28-2-2012 and the relevant pages of the visitors note has been marked as Ex.R3. A perusal of Ex.R3 confirms the version of RW.2.

12. The respondent has set up his case that it is admitted that the petitioner was an employee under them and she availed medical leave from 29-12-2011 to 5-1-2012 and though she was supposed to have joined duty on 9-1-2012, she failed to join on that date and her medical leave was not extended and no certificate for such alleged extension was ever submitted and since she has absented herself from 9-1-2012 without any notice or information or legal sanctioned leave, it will be presumed that she has abandoned the employment and subsequently they issued a show cause notice dated 24-1-2012 calling upon her to submit her

explanation for her unauthorised absence from 9-1-2012. The learned counsel for the respondent would point out section 14 (3) (e) of Industrial Employment (Standing Orders) Central Rules, 1946 and argued that when an employee is habitual absence without leave or absence without leave for more than ten days, it would amount to misconduct and the disciplinary action can be taken against the said employee for such misconduct. The said section runs as follows:-

14. Disciplinary action for misconduct:

(1) ...

(2) ...

(3) The following acts and omissions shall be treated as misconduct:

(a) ...

(b) ...

(c) ...

(d) ...

(e) habitual absence without leave or absence without leave for more than 10 days.

13. At this juncture, it is pertinent to refer the following decisions, which are relevant to this case:-

2002(4) L.L.N. 850:

State of Uttar Pradesh Vs. Presiding Officer, Labour Court, Agra and Another:

"Abandonment of service - Even in the case of alleged abandonment, it is necessary for employer to conduct an enquiry, issue a charge sheet and notice to the workman concerned informing him that he is continuously absenting without any sanctioned leave - Admittedly this having not been done in this case the plea of employer about abandonment of service by workman not tenable."

1988 1 LLN. Page 259:-

Gaurishankar Vishwakarma Vs. Eagle Spring Industries (P) Limited, and Others:

"Industrial dispute - Practice and procedure - Non-employment of workman - Case of employer is that workman has abandoned service - Even in case of abandonment of service employer has to give notice to workman and hold an enquiry - It is for employer to prove such abandonment - Labour Court expected to follow judicial procedure should not depend on unverified statements to come to conclusion that it was workman who had refused to resume work".

14. In this case, though the respondent has sent a show cause notice to the petitioner calling upon her explanation for her unauthorised absence from 8-1-2012 failing which disciplinary proceedings would be initiated against her. Admittedly, the respondent has not conducted any enquiry before the termination of her service. The case of the respondent is that the petitioner had abandoned the service by refusing to come and to resume the work. It is difficult to accept this case. It is now well-settled that even in the case of the abandonment of service, the employer has to give a notice to the workman, calling upon her to resume his duty and also to issue the charge sheet for her unauthorised absence and to hold an enquiry before terminating her service on that ground. In the present case, the respondent has done neither and it was for the employer to prove that the workman had abandoned the service by holding the domestic enquiry.

15. The learned counsel for the petitioner has submitted that the respondent had not followed section 33(2) (b) of Industrial Disputes Act, 1947 and had dismissed the petitioner unlawfully and as per the said section, the employer may pass an order of dismissal or discharged and at the same time make an application for approval of the action taken by him and if the approval is not granted under section 33 (2)(B) of Industrial Disputes Act, 1947, the order of the dismissal becomes ineffective from the date it was passed and failure to make application under the said section would render the order of dismissal inoperative. In order to support his claim, he relied upon the following decision:-

2002(1) L.L.N. 639:

Jaipur Zila Sahakari Bhoomi Vikas Bank Limited, Vs. Ram Gopal Sharma and Others:-

"Industrial Disputes Act, 1947, section 33(2)(b), proviso (as amended in 1956) - If approval is not granted under section 33(2)(b) or failure to make application under section 33(2)(b) seeking approval, renders order of dismissal inoperative-Dismissal becomes ineffective from date it was passed- Employee becomes entitled to wages from date of dismissal".

16. On the other hand, the learned counsel for the respondent has submitted that the petitioner is not a member of SISCO Latex Thozhilalargal Sangam and the petitioner has no nexus connection with the disputes which is pending before the conciliation officer and hence no approval is required from the conciliation officer, since the dispute raised before the conciliation officer was different from the issue under which the petitioner was dismissed. The learned counsel for the respondent relied upon the following decisions to support his claim:-

AIR 2002 SC 643:-

"The mere contravention of section 33 by the employer will not entitle the workman to an order of reinstatement because inquiry under section 33-A is

not confined only to the determination as to the contravention of section 33, but even if such contravention is proved, the Tribunal has to go further and deal also with the merits of the order of discharge or dismissal".

A.I.R. 1978 SC 995:-

The first issue which is required to be decided in a complaint filed by an aggrieved workman under section 33A is whether order of discharge or dismissal made by the employer is in contravention of section 33. The foundation of the complaint under section 33A is contravention of section 33 and if the workman is unable to show that the employer has contravened section 33 in making the order of discharge or dismissal, the complaint would be liable to be rejected. But if the contravention of section 33 is established, the next question would be whether the order of discharge or dismissal passed by the employer is justified on merits.

17. On the side of the petitioner, one Sundaramoorthy was examined as PW.2. PW.2 in his evidence has deposed that he was the General Secretary of Labour Union and the petitioner was the active member of his union and at the time of termination of the petitioner *i.e*., on 24-1-2012 there was a conciliation pending before the conciliation officer with regard to the wage revision of the employees of the respondent company and he has marked the charter of demands as Ex.P5 and the enquiry call letter sent by conciliation officer to the SISCO Latex Thozilalargal Sangam as Ex.P6. A perusal of Ex.P5 reveals that the said union has sent a letter to the conciliation officer intimating one day strike for the demands of wage revision and service conditions of the employees of their union. As per Ex.P6, the notice of enquiry was sent to the respondent company and to the union with regard to the charter of demand. The respondent themselves have admitted that there was a conciliation in I.D. No.2766/2011/LOC/AIL pending before the conciliation officer, but they stated that the said conciliation is a general dispute and not raised by the petitioner. Admittedly, the said conciliation was pending before the conciliation officer with regard to the wage revision of the employees of the respondent. When PW.2 has categorically stated that the petitioner was an active member in their union and the another conciliation was pending before the conciliation officer with regard to the wage revision of the employees of the respondent company at the time of termination of the petitioner, the said conciliation is also covered with the petitioner, who was the employee of the respondent company. In the above circumstance, the respondent has acted against the abovesaid proviso. Therefore, the dismissal order passed by the respondent management is inoperative one. In the above circumstances, the termination of the petitioner is bad in law and the same is liable to be set aside and consequently, the petitioner is entitled for reinstatement with continuity of service and with full back wages and other attendant benefits. Accordingly, this point is answered.

18. In the result the industrial dispute is allowed with costs and the respondent is directed to reinstate the petitioner into service with continuity of service and with full back wages and other attendant benefits.

Typed to my dictation, corrected and pronounced by me in the open court on this the 31st day of January 2013.

T. MOHANDASS,
Presiding Officer, Labour Court,
Puducherry.

———

List of petitioner's witnesses:

PW.1 — 10-10-2012-Suganthi

PW.2 — 2-11-2012 - Sundaramoorthy

List of petitioner exhibits:

Ex.P1 — Show cause notice issued to the petitioner, dated 13-1-2012.

Ex.P2 — Termination order, dated 24-1-2012 sent to the petitioner.

Ex.P3 — Dispute raised by the union before the conciliation officer.

Ex.P4 — Copy of the notice enquiry, dated 26-3-2012

Ex.P5 — Dispute raised by the union before the conciliation officer, dated 13-12-2011.

Ex.P6 — Copy of the notice of enquiry, dated 29-12-2011

Ex.P7 — Copy of the E.S.I. certificate of the petitioner.

List of respondent's witnesses:

RW. 1 — 17-11-2012-Sakthivel, Personnel Manager of the respondent company.

RW.2 — 7-12-2012 - Ranganathan

List of respondent's exhibits :

Ex.R1 — Copy of the letter, dated 25-3-2012 sent to the E.S.I Corporation.

Ex.R2 — Letter, dated 27-3-2012 sent to the respondent company.

Ex.R3 — Copy of the visitors register.

T. MOHANDASS,
Presiding Officer, Labour Court,
Puducherry.

GOVERNMENT OF PUDUCHERRY

LABOUR DEPARTMENT

(*G.O. Rt. No. 70/Lab./AIL/J/2013, dated 17th May 2013)*

NOTIFICATION

Whereas, an award in I.D. No. 18/2012, dated 31-1-2013 of the Labour Court, Puducherry in respect of the industrial dispute between the Managing Director, M/s. SISCO Latex (P) Limited, Puducherry and its workman Tmt. Neelavathy, over her non-employment has been received;

Now, therefore, in exercise of the powers conferred by sub-section (1) of section 17 of the Industrial Disputes Act, 1947 (Central Act XIV of 1947) read with the notification issued in Labour Department's G.O. Ms. No. 20/91/Lab./L, dated 23-5-1991, it is hereby directed by Secretary to Government (Labour) that the said award shall be published in the official gazette, Puducherry.

(By order)

S. Thammu Ganapathy,
Under Secretary to Government (Labour).

BEFORE THE LABOUR COURT AT PUDUCHERRY

Present : Thiru T. Mohandass, M.A., M.L.,
Presiding Officer, Labour Court.

Thursday, the 31st day of January 2013.

I.D. No. 18/2012

Neelavathy .. Petitioner

Vs.

The Managing Director, .. Respondent
SISCO Latex (P) Limited,
Puducherry.

This industrial dispute coming on 24-1-2013 before me for final hearing in the presence of Thiru R.T. Shankar, Advocate for the petitioner, Thiru J.A.S. Satish Kumar, Advocate for the respondent, upon hearing both sides, upon perusing the case records, after having stood over for consideration till this day, this court passed the following:

AWARD

The petitioner has filed a case before the conciliation officer as against the dismissal order passed by the respondent and since the said case has not been disposed off within 45 days, this industrial dispute is filed by the petitioner before this court under section 2 A of Industrial Disputes (Amendment) Act, 2010 (24 of 2010).

2. The petitioner in her petition has stated as follows:

The petitioner was working as permanent employee in the respondent company since 8-4-2004. She is an active member in SISCO Latex Thozhilalargal Sangam. The respondent management sent a vague letter to the petitioner, dated 24-1-2012 for the alleged absent from 18-1-2012 to 24-1-2012 for seven days. But the petitioner took the maternity leave and after expiring the said leave, since she needed rest, she applied for ESI leave and the said leave was submitted to the respondent management.

After receiving the said letter, dated 24-1-2012, the petitioner went to the respondent company to meet the Personnel Manager, but the said Personnel Manager abused her in a filthy language and shouted her that she will be removed from the service and sent her out from the room. On the next day, the petitioner went to the office with fear, but she was not permitted to enter into the factory premises and hence she returned back to her house. Then on 13-2-2012 the respondent sent a dismissal order to the petitioner. The order of dismissal is invalid and unlawful, since no show cause notice and charge sheet issued to the petitioner and also no enquiry was conducted. The respondent has also not sent the second show cause notice before terminating her from service. Hence she filed the present industrial dispute.

3. The respondent in his counter has stated as follows:

The petitioner was on leave from 5-1-2012 without informing the management. The petitioner submitted the ESI leave form only on 7-1-2012 at the time of receiving her salary and that too for two days *i.e.,* on 5-1-2012 and 6-1-2012. Though she stated that she would join duty on 9-1-2012, she failed to join on that date. The petitioner never reported for duty after that and remained absent. Hence, they issued a show cause notice, dated 13-1-2012 to the petitioner calling upon her to submit her explanations for her unauthorised absence from 9-1-2012 within two days from the date of receipt of that notice. In pursuance of the said show cause notice, there was no response from the petitioner. After having waited for ten days, on 24-1-2012 the termination order was sent to the petitioner with effect from 24-1-2012 for her unauthorised absence from 9-1-2012.

This respondent deny that the act of the management in terminating the petitioner is in contravention of section 33(2)(b) of Industrial Disputes Act. It is a fact that a dispute regarding revision of wages, annual increment and several other demands was raised by SISCO Latex Employee's

Union before the Labour Conciliation Officer, Puducherry in I.D. No.2766/11/LO(C)/AIL. However, the petitioner can under no circumstances be construed as a workman concerned in the dispute within the meaning of section 33 in order to sustain this petition. The features of the dispute raised by the union and the features of the present dispute raised by the petitioner in this petition are not common. Hence, section 33(2)(b) of Industrial Dispute Act is not applicable to this case. In the above circumstance, this petition is frivolous, not maintainable and deserves to be dismissed *in limine*.

4. On the side of the petitioner, PW.1 and PW.2 were examined and Ex.P1 to Ex.P8 were marked. On the side of the respondent, RW.1 and RW.2 were examined and Ex.R1 to Ex.R3 were marked.

5. *The point for consideration is:*

Whether the industrial dispute can be allowed?

6. *On this point :*

The contention of the petitioner is that she was working as permanent employee in the respondent company since 8-4-2004 and she was an active member in SISCO Latex Thozhilalargal Sangam and the respondent management sent a vague letter to her dated, 24-1-2012 for the alleged absent from 18-1-2012 to 24-1-2012 for seven days, but she took the maternity leave and after expiring the said leave, since she needed rest, she applied for ESI leave and the said leave was submitted to the respondent management. The petitioner further contended that after receiving the said letter, dated 24-1-2012, she went to the respondent company to meet the Personnel Manager, but the said Personnel Manager abused her in a filthy language and shouted her that she will be removed from the service and sent her out from the room and then on 13-2-2012 the respondent sent a dismissal order to her.

7. In order to prove her case, the petitioner examined himself as PW.1. PW.1 has deposed before this court as stated in her claim statement and marked Ex.P1 to Ex.P8.

8. *Per contra,* the contention of the respondent is that the petitioner was on leave from 5-1-2012 without informing the management and she submitted the ESI leave form only on 7-1-2012 at the time of receiving her salary and that too for two days *i.e.*. on 5-1-2012 and 6-1-2012 and though she stated that she would join duty on 9-1-2012, she failed to join on that date and she never reported for duty after that and remained absent and hence, they issued a show cause notice, dated 13-1-2012 to the petitioner calling upon her to submit her explanations for her unauthorised absence from 9-1-2012 within two days from the date of receipt of that notice and in pursuance of the said show cause notice, there was no response from the petitioner and after having waited for ten days, on 24-1-2012 the termination order was sent to the petitioner with effect from 24-1-2012 for her unauthorised absence from 9-1-2012. RW.1 has marked the letter sent by them to ESI Corporation as Ex.R1 and the reply sent by the ESI Corporation to the respondent as Ex.R2. As per Ex.R2, the petitioner has not submitted any medical-*cum*-leave certificate after 18-1-2012 to their office.

9. There is no dispute the petitioner was an employee under the respondent company and she gave birth a female, for which she admitted in the Rajiv Gandhi Government Women Hospital, Puducherry from 26-10-2011 to 1-11-2011 and she has taken maternity leave from the ESI Corporation from 26-10-2011 to 17-1-2012, as could be seen from the copy of the ESI Maternity Benefit Certificate under Ex.P7. Ex.P8 is a copy of the Discharge Slip, issued by Rajiv Gandhi Government Women and Children Hospital, Puducherry, which would also confirm that the petitioner was admitted in the hospital from 26-10-2011 and 7-11-2011 for delivery. Ex.P1 is the show cause notice, dated 24-1-2012 issued by the respondent to the petitioner. As per Ex.P1, the petitioner has been given notice of show cause as to why disciplinary action should not be taken against her for the unauthorized absent from 18-1-2012.

10. According to PW.1, on receipt of the show cause notice under Ex.P1, she went to the respondent company and met the Personnel Manager Thiru Sakthivel and requested him for her extension of maternity leave for further one week, but the said Sakthivel abused her with a filthy language and shouted her to go out of the room.

11. The learned counsel for the respondent that at no point of time, the petitioner met the Personnel Manager Thiru Sakthivel as stated by the petitioner and hence, the contention of the petitioner that he shouted the petitioner by using filthy language is falsehood. In support of the said contention, the Security Officer of the respondent company was examined as RW.2. RW.2 in his evidence has deposed that there is one main entrance which is used by all workers and visitors, entering the factory premises of the respondent company and on perusal of visitors note regarding entries of the visitors/workers, it is seen that the petitioner has not entered the factory premises from 1-1-2012 to 28-2-2012 and the relevant pages of the visitors note has been marked as Ex.R3. A perusal of Ex.R3 confirms the version of RW.2.

12. The respondent has set up his case that it is admitted that the petitioner was an employee under them and she availed maternity leave from 26-10-2011 to

17-1-2012 and through she was supposed to have joined duty on 18-1-2012, she failed to join on that date and her maternity leave was not extended and no certificate for such alleged extension was ever submitted and since she has absented herself from 18-1-2012 without any notice or information or legal sanctioned leave, it will be presumed that she has abandoned the employment and subsequently they issued a show cause notice, dated 24-1-2012 calling upon her to submit her explanation for her unauthorised absence from 18-1-2012. The learned counsel for the respondent would point out section 14 (3) (e) of Industrial Employment (Standing Orders) Central Rules, 1946 and argued that when an employee is habitual absence without leave or absence without leave for more than ten days, it would amount to misconduct and the disciplinary action can be taken against the said employee for such misconduct. The said section runs as follows:-

Disciplinary action for misconduct:

(1) .....

(2) .....

(3) The following acts and omissions shall be treated as misconduct:

(a) .....

(b) .....

(c) .....

(d) .....

(e) habitual absence without leave or absence without leave for more than 10 days.

13. At this juncture, it is pertinent to refer the following decisions, which are relevant to this case:-

2002(4) L.L.N. 850:

State of Uttar Pradesh Vs. Presiding Officer. Labour Court, Agra and another:

"Abandonment of service - Even in the case of alleged abandonment, it is necessary for employer to conduct an enquiry, issue a charge sheet and notice to the workman concerned informing him that he is continuously absenting without any sanctioned leave - Admittedly this having not been done in this case the plea of employer about abandonment of service by workman not tenable.".

1988 1 L.L.N. Page 259:

Gaurishankar Vishwakarma Vs. Eagle Spring Industries (P) Limited and others:

"Industrial dispute-Practice and procedure - Non-employment of workman-Case of employer is that workman has abandoned service-Even in case of abandonment of service employer has to give notice to workman and hold an enquiry-

It is for employer to prove such abandonment-Labour Court expected to follow judicial procedure should not depend on unverified statements to come to conclusion that it was workman who had refused to resume work.".

14. In this case, though the respondent has sent a show cause notice to the petitioner calling upon her explanation for her unauthorised absence from 18-1-2012 failing which disciplinary proceedings would be initiated against her, admittedly, the respondent has not conducted any enquiry before the termination of her service. The case of the respondent is that the petitioner had abandoned the service by refusing to come and to resume the work. It is difficult to accept this case. It is now well settled that even in the case of the abandonment of service, the employer has to give a notice to the workman, calling upon her to resume his duty and also to issue the charge sheet for her unauthorised absence and to hold an enquiry before terminating her service on that ground. In the present case, the respondent has done neither. It was for the employer to prove that the workman had abandoned the service by holding the domestic enquiry.

15. The learned counsel for the petitioner has submitted that the respondent had not followed section 33(2)(b) of Industrial Disputes Act, 1947 and had dismissed the petitioner unlawfully and as per the said section, the employer may pass an order of dismissal or discharged and at the same time make an application for approval of the action taken by him and if the approval is not granted under section 33 (2)(b) of Industrial Disputes Act, 1947, the order of the dismissal becomes ineffective from the date it was passed and failure to make application under the said section would render the order of dismissal inoperative. In order to support his claim, he relied upon the following decision:

2002(1) L.L.N. 639:

Jaipur Zila Sahakari Bhoomi Vikas Bank Limited, Vs. Ram Gopal Sharma and others:

"Industrial Dispute Act, 1947, S33(2)(b), Proviso (as amended in 1956) - If approval is not granted under Section 33 (2) (b) or failure to make application under Section 33 (2) (b) seeking approval, renders order of dismissal inoperative -Dismissal becomes ineffective from date it was passed-Employee becomes entitled to wages from date of dismissal.".

16. On the other hand, the learned counsel for the respondent has submitted that the petitioner is not a member of SISCO Latex Thozhilalargal Sangam and the petitioner has no nexus connection with the disputes which is pending before the Conciliation Officer and hence no approval is required from the Conciliation Officer, since the dispute raised before the Conciliation

Officer was different from the issue under which the petitioner was dismissed. The learned counsel for the respondent relied upon the following decisions to support his claim.

AIR 2002 SC 643:

"The mere contravention of section 33 by the employer will not entitle the workman to an order of reinstatement because inquiry under section 33-A is not confined only to the determination as to the contravention of section 33, but even if such contravention is proved, the Tribunal has to go further and deal also with the merits of the order of discharge or dismissal.".

AIR 1978 SC 995:

"The first issue which is required to be decided in a complaint filed by an aggrieved workman under section 33A is whether order of discharge or dismissal made by the employer is in contravention of section 33. The foundation of the complaint under section 33-A is contravention of section 33 and if the workman is unable to show that the employer has contravened section 33 in making the order of discharge or dismissal, the complaint would be liable to be rejected. But if the contravention of section 33 is established, the next question would be whether the order of discharge or dismissal passed by the employer is justified on merits.

17. On the side of the petitioner, one Sundaramoorthy was examined as PW.2. PW.2 in his evidence has deposed that he was the General Secretary of Labour Union and the petitioner was the active member of his union and at the time of termination of the petitioner *i.e.,* on 13-2-2012, there was a conciliation pending before the conciliation officer with regard to the wage revision of the employees of the respondent company and he has marked the charter of demands as Ex.P5 and the enquiry call letter sent by conciliation officer to the SISCO Latex Thozilalargal Sangam as Ex.P6. A perusal of Ex.P5 reveals that the said union has sent a letter to the conciliation officer intimating one day strike for the demands of wage revision and service conditions of the employees of their union. As per Ex.P6, the notice of enquiry was sent to the respondent company and to the union with regard to the charter of demand. The respondent themselves have admitted that there was a conciliation in I.D. No.2766/2011/LOC/AIL pending before the conciliation officer, but they stated that the said conciliation is a general dispute and not raised by the petitioner. Admittedly, the said conciliation was pending before the conciliation officer with regard to the wage revision of the employees of the respondent. When PW.2 has categorically stated that the petitioner was an active member in their union and the another conciliation was pending before the conciliation officer with regard to the wage revision of the employees of the respondent company at the time of termination of the petitioner, the said conciliation is also covered with the petitioner, who was the employee of the respondent company. In the above circumstance, the respondent has acted against the above said proviso. Therefore, the dismissal order passed by the respondent management is inoperative one. In the above circumstances, the termination of the petitioner is bad in law and the same is liable to be set aside and consequently, the petitioner is entitled for reinstatement with continuity of service and with full back wages and other attendant benefits. Accordingly, this point is answered.

18. In the result the industrial dispute is allowed with costs and the respondent is directed to reinstate the petitioner into service with continuity of service and with full back wages and other attendant benefits.

Typed to my dictation, corrected and pronounced by me in the open court on this the 31st day of January, 2013.

T. MOHANDASS,
Presiding Officer,
Labour Court, Puducherry.

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List of petitioner's witnesses :

PW.1 — 10-10-2012 — Neelavathy

PW.2 — 2-11-2012 — Sundaramoorthy

List of petitioner's exhibits :

Ex.P1 — Show cause notice issued to the petitioner, dated 24-1-2012.

Ex.P2 — Termination order, dated 13-2-2012 sent to the petitioner

Ex.P3 — Dispute raised by the union before the conciliation officer

Ex.P4 — Copy of the notice of enquiry, dated 26-3-2012.

Ex.P5 — Dispute raised by the union before the conciliation officer, dated 13-12-2011.

Ex.P6 — Copy of the notice of enquiry, dated 29-12-2011.

Ex.P7 — Copy of the ESI certificate of the petitioner

Ex.P8 — Copy of the discharge slip

List of respondent's witnesses:

RW.1 — 17-11-2012 — Sakthivel, Personnel Manager of the respondent company.

RW.2 — 7-12-2012 — Ranganathan

List of respondent's exhibits:

Ex.R1 — Copy of the letter, dated 25-3-2012 sent to the ESI Corporation.

Ex.R2 — Letter dated 27-3-2012 sent to the respondent company.

Ex.R3 — Copy of the visitors register.

T. MOHANDASS,
Presiding Officer,
Labour Court, Puducherry.

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GOVERNMENT OF PUDUCHERRY

LABOUR DEPARTMENT

(*G.O. Rt. No. 71/Lab./AIL/J/2013, dated 17th May 2013)*

NOTIFICATION

Whereas, an award in I.D. No. 20/2012, dated 31-1-2013 of the Labour Court, Puducherry in respect of the industrial dispute between the Managing Director, M/s. SISCO Latex (P) Limited, Puducherry and its workman Tmt. Gomathi over her non-employment has been received;

Now, therefore, in exercise of the powers conferred by sub-section (1) of section 17 of the Industrial Disputes Act, 1947 (Central Act XIV of 1947) read with the notification issued in Labour Department's G. O. Ms. No.20/91/Lab./L, dated 23-5-1991, it is hereby directed by Secretary to Government (Labour) that the said award shall be published in the official gazette, Puducherry.

(By order)

S. THAMMU GANAPATHY,
Under Secretary to Government (Labour).

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BEFORE THE LABOUR COURT AT PUDUCHERRY

Present : Thiru T. MOHANDASS, M.A., M.L.,
Presiding Officer, Labour Court

Thursday, the 31st day of January 2013

I.D. No. 20/2012

S. Gomathi . . Petitioner

Vs.

The Managing Director,
SISCO Latex (P) Limited,
Puducherry. . . Respondent

This industrial dispute coming on 24-1-2013 before me for final hearing in the presence of Thiru R.T. Shankar, Advocate for the petitioner, Thiru J.A.S. Satish Kumar, Advocate for the respondent, upon hearing both sides, upon perusing the case records, after having stood over for consideration till this day, this court passed the following:

AWARD

The petitioner has filed a case before the conciliation officer as against the dismissal order passed by the respondent and since the said case has not been disposed off within 45 days, this industrial dispute is filed by the petitioner before this court under section 2 A of Industrial Disputes (Amendment) Act, 2010 (24 of 2010).

2. The petitioner in her petition has stated as follows:-

The petitioner was working as permanent employee in the respondent company since 26-8-2009. She is an active member in SISCO Latex Thozhilalargal Sangam. The respondent management sent a vague letter to the petitioner, dated 13-1-2012 for the alleged absent from 9-1-2012 to 13-1-2012 for five days. But the petitioner availed the medical leave on 5-1-2012 and on 6-1-2012 and accordingly she submitted the same under E.S.I. Form.

After receiving the said letter, dated 13-1-2012, the petitioner went to the respondent company to meet the Personnel Manager and requested him to extend the leave for further one week, but the said Personnel Manager shouted her by stating that he will not give any leave and he terminated her from service from today itself. On the next day, the petitioner went to the office with fear, but she was not permitted to enter into the factory premises and hence she returned back to her house. Then on 24-1-2012 the respondent sent a dismissal order to the petitioner. The order of dismissal is invalid and unlawful, since no show cause notice and charge-sheet issued to the petitioner and also no enquiry was conducted. The respondent has also not sent the second show cause notice before terminating her from service. Hence she filed the present industrial dispute.

3. The respondent in his counter has stated as follows:-

The petitioner was on leave from 5-1-2012 without informing the management. The petitioner submitted the E.S.I. leave from only on 7-1-2012 that too for the period from 5-1-2012 to 6-1-2012. She stated that she would join duty on 9-1-2012. Though she was supported to have reported for duty at least on 9-1-2012, she failed to join on that date. The petitioner never reported for duty after that and remained absent.

Hence, they issued a show cause notice dated 13-1-2012 to the petitioner calling upon her to submit her explanations for her unauthorised absence from 9-1-2012 within two days from the date of receipt of that notice. In pursuance of the said show cause notice, there was no response from the petitioner. After having waited for ten days, on 24-1-2012 the termination order was sent to the petitioner with effect from 24-1-2012 for her unauthorised absence from 9-1-2012.

This respondent deny that the act of the management in terminating the petitioner is in contravention of section 33(2)(b) of Industrial Disputes Act. It is a fact that a dispute regarding revision of wages, annual increment and several other demands was raised by SISCO Latex Employee's Union before the Labour Conciliation Officer, Puducherry in industrial disputes No.2766/11/LO(C)/AIL. However, the petitioner can under no circumstances be construed as a workman concerned in the dispute within the meaning of section 33 in order to sustain this petition. The features of the dispute raised by the union and the features of the present dispute raised by the petitioner in this petition are not common. Hence, section-33(2)(b) of Industrial Disputes Act is not applicable to this case. In the above circumstance, this petition is frivolous, not maintainable and deserves to be dismissed *in limine*.

4. On the side of the petitioner, PW1and PW2 were examined and Ex.P1 to Ex.P7 were marked. On the side of the respondent, RW.1 and RW.2 were examined and Ex.R1 to Ex.R3 were marked

5. *The point for consideration is:*

Whether the industrial disputes can be allowed?

6. *On this point:-*

The contention of the petitioner is that she was working as permanent employee in the respondent company since 26-8-2009 and she was an active member in SISCO Latex Thozhilalargal Sangam and the respondent management sent a vague letter to her dated 13-1-2012 for the alleged absent from 9-1-2012 to 13-1-2012 for five days, but she availed the medical leave on 5-1-2012 and 6-1-2012 and the leave application for the said period was sent to the respondent management. The petitioner further contended that after receiving the said letter, dated 13-1-2012, she went to the respondent company to meet the Personnel Manager and requested him to extend the leave for further one week, but the said Personnel Manager shouted her by stating that he will not give any leave to her and he terminated her from service from today itself and then on 13-2-2012 the respondent sent a dismissal order to her.

7. In order to prove her case, the petitioner examined himself as PW1. PW.1 has deposed before this court as stated in her claim statement and marked Ex.P1 to Ex.P7.

8. *Per contra*, the contention of the respondent is that the petitioner was on leave from 5-1-2012 without informing the management and the petitioner submitted the E.S.I. leave form only on 7-1-2012 that too for two days *i.e.* on 5-1-2012 and 6-1-2012 and she stated on 7-1-2012 that she would join duty on 9-1-2012 and though she was supposed to have reported for duty at least on 9-1-2012, she failed to join on that date and she never reported for duty after that and remained absent and hence they issued a show cause notice dated 13-1-2012 to the petitioner calling upon her to submit her explanations for her unauthorised absence from 9-1-2012 within two days from the date of receipt of that notice and in pursuance of the said Show Cause Notice, there was no response from the petitioner and after having waited for ten days, on 24-1-2012 the termination Order was sent to the petitioner with effect from 24-1-2012 for her unauthorised absence from 9-1-2012. RW.1 has marked the letter sent by them to E.S.I. Corporation as Ex.R1 and the reply sent by the E.S.I. Corporation to the respondent as Ex.R2. As per Ex.R2, the petitioner has not submitted any medical-*cum*-leave certificate after 9-1-2012 to their office.

9. There is no dispute the petitioner was an employee under the respondent company and she has taken medical leave on 5-1-2012 and 6-1-2012, as could be seen from the copy of the fitness certificate issued by the E.S.I. Corporation under Ex.P7 and the petitioner has stated that she will join duty on 9-1-2012. A perusal of Ex.P7 reveals that the petitioner was fit to join duty on 7-1-2012. Ex.P1 is the show cause notice dated 13-1-2012 issued by the respondent to the petitioner. As per Ex.P1, the petitioner has been given notice of show cause as to why disciplinary action should not be taken against her for the unauthorised absent from 9-1-2012.

10. According to PW.1, on receipt of the show cause notice under Ex.P1, she went to the respondent company and met the Personnel Manager Thiru Sakthivel and requested him for her extension of medical leave for further one week, but the said Sakthivel has not given the leave and stated that he terminated her from service.

11. The learned counsel for the respondent that at no point of time, the petitioner met the Personnel Manager Thiru Sakthivel as stated by the petitioner and hence, the contention of the petitioner that he shouted the petitioner by using filthy language is falsehood. In support of the said contention, the security officer of the respondent company was examined as RW.2. RW.2 in his evidence has deposed that there is one main

entrance which is used by all workers and visitors, entering the factory premises of the respondent company and on perusal of visitors note regarding entries of the visitors/workers, it is seen that the petitioner has not entered the factory premises from 1-1-2012 to 28-2-2012 and the relevant pages of the visitors note has been marked as Ex.R3. A perusal of Ex.R3 confirms the version of RW.2.

12. The respondent has set up his case that it is admitted that the petitioner was an employee under them and she availed medical leave on 5-1-2012 and 6-1-2012 and she stated to them on 7-1-2012 that she will join duty on 9-1-2012 and though she was supposed to have joined duty on 9-1-2012, she failed to join on that date and her medical leave was not extended and no certificate for such alleged extension was ever submitted and since she has absented herself from 9-1-2012 without any notice or information or legal sanctioned leave, it will be presumed that she has abandoned the employment and subsequently they issued a show cause notice dated 24-1-2012 calling upon her to submit her explanation for her unauthorised absence from 9-1-2012. The learned counsel for the respondent would point out Section 14 (3)(e) of Industrial Employment (Standing Orders) Central Rules, 1946 and argued that when an employee is habitual absence without leave or absence without leave for more than ten days, it would amount to misconduct and the disciplinary action can be taken against the said employee for such misconduct. The said section runs as follows:-

14. Disciplinary action for misconduct:

(1) ...

(2) ...

(3) The following acts and omissions shall be treated as misconduct:

(a) ..

(b) ..

(c) ..

(d) ..

(e) habitual absence without leave or absence without leave for more than 10 days.

13. At this juncture, it is pertinent to refer the following decisions, which are relevant to this case:-

2002(4) L.L.N. 850:-

State of Uttar Pradesh Vs. Presiding Officer. Labour Court Agra and another:—

"Abandonment of service - Even in the case of alleged abandonment, it is necessary for employer to conduct an enquiry, issue a charge sheet and notice to the workman concerned informing him that he is continuously absenting without any sanctioned leave - Admittedly this having not been done in this case the plea of employer about abandonment of service by workman not tenable."

1988 1 L.L.N. Page 259:-

Gaurishankar Vishwakarma Vs. Eagle Spring Industries (P) Limited. and Others:—

"Industrial dispute - Practice and procedure - Non-employment of workman - Case of employer is that workman has abandoned service - Even in case of abandonment of service employer has to give notice to workman and hold an enquiry - It is for employer to prove such abandonment - Labour Court expected to follow judicial procedure should not depend on unverified statements to come to conclusion that it was workman who had refused to resume work."

14. In this case, though the respondent has sent a show cause notice to the petitioner calling upon her explanation for her unauthorised absence from 9-1-2012 failing which disciplinary proceedings would be initiated against her. Admittedly, the respondent has not conducted any enquiry before the termination of her service. The case of the respondent is that the petitioner had abandoned the service by refusing to come and to resume the work. It is difficult to accept this case. It is now well settled that even in the case of the abandonment of service, the employer has to give a notice to the workman, calling upon her to resume her duty and also to issue the charge sheet for her unauthorised absence and to hold an enquiry before terminating her service on that ground. In the present case, the respondent has done neither and it was for the employer to prove that the workman had abandoned the service by holding the domestic enquiry.

15. The learned counsel for the petitioner has submitted that the respondent had not followed section 33(2)(b) of Industrial Disputes Act, 1947 and had dismissed the petitioner unlawfully and as per the said section, the employer may pass an order of dismissal or discharged and at the same time make an application for approval of the action taken by him and if the approval is not granted under section 33 (2)(b) of Industrial Disputes Act, 1947, the order of the dismissal becomes ineffective from the date it was passed and failure to make application under the said section would render the order of dismissal inoperative. In order to support his claim, he relied upon the following decision:-

2002(1) L.L.N. 639:-

Jaipur Zila Sahakari Bhoomi Vikas Bank Limited., Vs. Ram Gopal Sharma and Others:—

"Industrial Dispute Act section 1947, S33(2)(b), Proviso (as amended in 1956) - If approval is not granted under Section 33(2)(b) or failure to make application under S.33(2)(b) seeking approval, renders order of dismissal inoperative - Dismissal becomes ineffective from date it was passed - Employee becomes entitled to wages from date of dismissal."

16. On the other hand, the learned counsel for the respondent has submitted that the petitioner is not a member of the SISCO Latex Thozhilalargal Sangam and the petitioner is no nexus connection with the disputes which is pending before the conciliation officer and hence no approval is required from the conciliation officer, since the dispute raised before the conciliation officer was different from the issue under which the petitioner was dismissed. The learned counsel for the respondent relied upon the following decisions to support his claim:-

AIR 2002 SC 643:-

"The mere contravention of section 33 by the employer will not entitle the workman to an order of reinstatement because inquiry under section 33-A is not confined only to the determination as to the contravention of section 33, but even if such contravention is proved, the Tribunal has to go further and deal also with the merits of the order of discharge or dismissal."

AIR 1978 S.C 995:-

"The first issue which is required to be decided in a complaint filed by an aggrieved workman under section 33A is whether order of discharge or dismissal made by the employer is in contravention of section 33, The foundation of the complaint under section 33A is contravention of section 33 and if the workman is unable to show that the employer has contravened section 33 in making the order of discharge or dismissal, the complaint would be liable to be rejected. But if the contravention of section 33 is established, the next question would be whether the order of discharge or dismissal passed by the employer is justified on merits.

17. On the side of the petitioner, one Sundaramoorthy was examined as PW.2. PW.2 in his evidence has deposed that he was the General Secretary of labour union and the petitioner was the active member of his union and at the time of termination of the petitioner *i.e*. on 24-1-2012, there was a conciliation pending before the conciliation officer with regard to the wage revision of the employees of the respondent company and he has marked the charter of demands as Ex.P5 and the enquiry call letter sent by conciliation officer to the SISCO Latex Thozilalargal Sangam as Ex,P6. A perusal of Ex.P5 reveals that the said union has sent a letter to the conciliation officer intimating one day strike for the demands of wage revision and service conditions of the employees of their union. As per Ex.P6, the notice of enquiry was sent to the respondent company and to the union with regard to the charter of demand. The respondent themselves have admitted that there was a conciliation in I.D. No.2766/2011/LOC/AIL pending before the conciliation officer, but they stated that the said conciliation is a general dispute and not raised by the petitioner. Admittedly, the said conciliation was pending before the conciliation officer with regard to the wage revision of the employees of the respondent. When PW.2 has categorically stated that the petitioner was an active member in their union and the another conciliation was pending before the conciliation officer with regard to the wage revision of the employees of the respondent company at the time of termination of the petitioner, the said conciliation is also covered with the petitioner, who was the employee of the respondent company. In the above circumstance, the respondent has acted against the above said proviso. Therefore, the dismissal order passed by the respondent management is inoperative one. In the above circumstances, the termination of the petitioner is bad in law and the same is liable to be set aside and consequently, the petitioner is entitled for reinstatement with continuity of service and with full back wages and other attendant benefits. Accordingly, this point is answered.

18. In the result the industrial dispute is allowed with costs and the respondent is directed to reinstate the petitioner into service with continuity of service and with full back wages and other attendant benefits.

Typed to my dictation, corrected and pronounced by me in the open court on this the 31st day of January 2013.

T. MOHANDASS,
Presiding Officer, Labour Court,
Puducherry.

———

List of petitioner's witnesses :

PW.1 — 10-10-2012 S. Gomathi

PW.2 — 2-11-2012 Sundaramoorthy

List of petitioner's exhibits :

Ex.P1 — Show cause notice issued to the petitioner, dated 13-1-2012.

Ex.P2 — Termination order, dated 24-1-2012 send to the petitioner.

Ex.P3 — Dispute raised by the union before the conciliation officer.

Ex.P4 — Copy of the notice enquiry, dated 26-3-2012

Ex.P5 — Dispute raised by the union before the conciliation officer, dated 13-12-2011.

Ex.P6 — Copy of the notice enquiry, dated 29-12-2011

Ex.P7 — Copy of the E.S.I. certificate of the petitioner.

List of respondent's witnesses :

RW.1 — 17-11-2012 — Sakthivel, Personnel Manager of the respondent company.

RW.2 — 7-12-2012 Ranganathan

List of respondent's exhibits :

Ex.R1 — Copy of the letter, dated 25-3-2012 sent to the E.S.I. Corporation.

Ex.R2 — Letter, dated 27-3-2012 sent to the respondent company.

Ex.R3 — Copy of the visitors register

T. MOHANDASS,
Presiding Officer, Labour Court,
Puducherry.

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GOVERNMENT OF PUDUCHERRY
LABOUR DEPARTMENT

(*G.O. Rt. No. 72/Lab./AIL/J/2013, dated 17th May 2013)*

NOTIFICATION

Whereas, an award in I.D. No. 2/2012, dated 30-11-2012 of the Labour Court, Puducherry in respect of the industrial dispute between the Managing Director, M/s. Hindustan Unilever Limited, Detergent Factory, Puducherry and its workman Thiru R. Azhagappan over non-employment has been received;

Now, therefore, in exercise of the powers conferred by sub-section (1) of section 17 of the Industrial Disputes Act, 1947 (Central Act XIV of 1947) read with the notification issued in Labour Department's G.O. Ms. No. 20/9/Lab./L, dated 23-5-1991, it is hereby directed by Secretary to Government (Labour) that the said award shall be published in the official gazette, Puducherry.

(By order)

S. THAMMU GANAPATHY,
Under Secretary to Government (Labour).

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BEFORE THE LABOUR COURT AT PUDUCHERRY

Present : Thiru T. MOHANDASS, M.A., M.L.,
Presiding Officer, Labour Court.

Friday, the 30th day of November 2012

I.D. No. 2/2012

R. Azhagappan . . Petitioner

Versus

The General Manager,
Hindustan Unilever Limited,
Detergent Factory, Puducherry-605 102 . . Respondent

This industrial dispute coming on 26-11-2012 for final hearing before me in the presence of Thiru R. I. Shankar, Advocate for the petitioner, Thiruvalargal L. Sathish and D. Dayanithi, Advocates for the respondent, upon hearing both sides, upon perusing the case records, after having stood over for consideration till this day, this court passed the following:

AWARD

The petitioner has filed a case before the conciliation officer as against the dismissal order passed by the respondent and since the said case has not been disposed off within 45 days, this industrial dispute is filed by the petitioner before this court under section 2 A of the Industrial Disputes (Amendment) Act, 2010 (24 of 2010).

2. The petitioner, in his claim statement, has averred as follows:

The petitioner was working as permanent employee in the respondent company from 8-4-1996 and he was an active member in the Hindustan Unilever Employees Union.

The respondent management raised a false complaint against the petitioner that he has taken leave without approval from the management from 1-3-2008 to 30-6-2008 and the enquiry was conducted, for which, the H.R. Manager was appointed as Enquiry Officer. The Enquiry Officer has not conducted the enquiry in a fair manner and had acted as management representative and had conducted the enquiry in biased manner. Further in the enquiry, the petitioner was threatened to accept the charges in writing by the Enquiry Officer. In the enquiry, the Enquiry Officer had refused to give sufficient opportunity to the petitioner and had refused to mark even a single document on the part of the petitioner. The petitioner was also not permitted to examine even a single witness on his side. Based on the report of the Enquiry Officer, the petitioner was dismissed from service on 11-7-2009. The dismissal of the petitioner is in violation of principles of natural justice and contrary to the provisions of Industrial Disputes Act.

Further on the date when he was terminated, two conciliation proceedings concerning their union was pending before the conciliation officer. Hence, the respondent management has not followed section 33(2)(b) of Industrial Disputes Act. In the above circumstances, the present industrial dispute is filed for his reinstatement along with other benefits.

3. In the counter statement, the respondent has stated as follows:

The petitioner was employed as general worker with effect from 8-4-1996. The petitioner was a chronic absentee taking leave without authorisation.

The petitioner continued to be erratic in his attendance and remained unauthorisedly absent on various dates from March 2008. When the petitioner did not turn up for employment, the respondent issued a detailed charge sheet, which was not received by the petitioner. Then the enquiry was conducted and in the enquiry proceedings, the petitioner categorically admitted the fact that he had remained unauthorisedly absent from July 2008. The Enquiry Officer submitted his detailed report on 26-10-2008 by coming to the conclusion that the petitioner was guilty of the charges levelled against him. The respondent immediately issued a second show cause notice along with the enquiry report to the petitioner on 1-6-2009 and the petitioner submitted his reply to the same on 23-6-2009. Since the reply was not satisfactory, the petitioner was issued the termination order on 11-7-2009. The petitioner was removed from the services for a grave misconduct of chronic, habitual absenteeism, which was admitted by him in an independent and impartial domestic enquiry. Hence, the dismissal of the petitioner from service is fully justified. Therefore, the respondent prays for dismissal of the industrial dispute.

4. On the side of the petitioner, PW.1 and PW.2 were examined and Exs.P1 to Ex.P12 were marked. On the side of the respondent, RW.1 was examined and Exs.R1 to Ex.R22 were marked.

5. *The point for determination is:*

Whether the petitioner can be considered for reinstatement in service with accrued benefits?

6. *On the point:*

According to the petitioner, he was working as permanent employee in the respondent company from 8-4-1996 and the respondent raised a false allegation against him that from 1-3-2008 to 30-6-2008 he has taken leave without approval from the management and the enquiry was conducted, for which, the H.R.Manager was appointed as Enquiry Officer and the Enquiry Officer has not conducted the enquiry in a fair manner and had acted as management representative and had conducted the enquiry in a biased manner and in the enquiry, he was threatened to accept the charges in writing by the Enquiry Officer. In order to prove his contention, the petitioner was examined as PW.1.

7. *Per contra,* the contention of the respondent is that the petitioner was a chronic absentee taking leave without authorisation and he continued to be erratic in his attendance and remained unauthorisedly absent on various dates *i.e.,* 70 days from January 2003 to 15-5-2003, 333.5 days from January 2003 to 18-2-2004, from 23-9-2004 to 10-10-2004, 107.5 days from 1-5-2006 to 30-11-2006, 81 days from 18-2-2007 to 22-6-2007, from 27-11-2007 to 28-2-2008, January 2008 to December 2008 and 103 days from March 2008 to June 2008 and hence they issued a detailed charge sheet, which was not received by him and then the enquiry was conducted and in the enquiry proceedings, though the petitioner initially denied the charges, during the course of enquiry, he categorically admitted the fact that he had remained unauthorisedly absent and based on the report of the Enquiry Officer, he was dismissed from service. In order to prove his contention, the H.R. Executive was examined as RW.1.

8. In order to prove his claim, RW.1 has marked the copy of the letter, dated 9-10-2002 issued to the petitioner by the respondent as Ex.R2. A perusal of Ex.R2, dated 9-10-2002 reveals that the petitioner has been issued a letter for unauthorised absent from 12-9-2002 till issue of the said letter and directed to submit his explanation for the same. Ex.R3 is the explanation given by the petitioner admitting about the said unauthorised absent due to stomach problem. Ex.R4 is the copy of the caution letter issued to the petitioner for the said unauthorised absent and directed him not to take any such leave in future. Ex.R5 is the copy of the caution and wise counsel letter for unauthorised absent from 10-1-2003 till 3-2-2003. Ex.R6 is the copy of the charge sheet for the unauthorised absent for 21 days in January 2003, 12 days in February 2003, 25 days in April 2003 and 12 days up to 15th May 2003. Ex.R7 is the copy of the letter sent by the father of the petitioner and Ex.R8 is the copy of the letter sent by the brother of the petitioner, stating that since his son (petitioner) was mentally affected and since he took treatment with the doctor, he could not report for duty and prayed the respondent management not to report for duty and also not to appear for the enquiry proceedings. Ex.R9 is the copy of the charge sheet for unauthorised absent for 333.5 days from January 2003 to 18-2-2004. Ex.R10 is the copy of the warning letter issued to the petitioner for his unauthorised absent from 23-9-2004 to 10-10-2004. Ex.R11 is the copy of the punishment order, as per which, the petitioner was suspended for six days from 4-4-2005 to 9-4-2005. Ex.R12 is the copy of the charge sheet for unauthorised absent of the petitioner for 107.5 days from May 2006 to 30-11-2006. Ex.R13 is the copy of the charge sheet for unauthorised absent for 81 days from 18-2-2007 to 22-6-2007. Ex.R14 is the copy of the punishment order, dated 17-7-2007, suspending the petitioner for two days on 25-7-2007 and 26-7-2007. Ex.R15 is the copy of the warning letter sent to the petitioner directing him to report for duty, as he has not reported for duty in any of the day during the year 2008. Ex.R16 is the copy of the apology letter sent by the petitioner admitting his unauthorised absent from 27-11-2007 to 28-2-2008. All the above documents have

been marked on the side of the respondent on objection. Apart from the above, RW.1 has marked the computerised statement of overall percentage of authorised and unauthorised absenteeism from January 2007 to September 2012 as Ex.R21 and the copy of the attendance record for the period from January 2007 to February 2008 as Ex.R22. A perusal of Ex.R21 reveals that the percentage of both authorised and unauthorised absenteeism as on December 2012 is 26.49%.

9. In this regard, the learned counsel for the petitioner has submitted that in the year 2002, a long-term settlement was signed by the trade unions, it has been agreed by both the parties that the computerised time attendance system will be implemented and therefore the respondent management introduced a time attendance system in the year of 2003 and after that in the year 2005, the respondent management without consultation of any union's or any terms of employment or leave rules or standing order clause unilaterally introduced the attendance/automatic lock/reject system and this was disputed by the trade union. The learned counsel for the petitioner further submitted that the petitioner union filed a writ petition before the Hon'ble High Court, Madras and the Hon'ble High Court dismissed the said petition stating that they can raise the said dispute before the industrial tribunal for remedy.

10. On the side of the petitioner, the President of the Hindustan Unilever Employees' Association was examined as PW.2. PW.2 in his evidence has deposed that he was working as skilled operator in the respondent company and the petitioner is the member of his association and Ex.P1 is the receipt issued by the union and Ex.P7 is the application given by the petitioner for joining his association. PW.2 further deposed that the respondent company introduced computerised time attendance system and whenever the workmen registered their names, it was programmed that registration will be directly rejected and utilising the said programme and with a view to victimise the workers, the registration was locked and the petitioner complained that his presence was not registered in the computer and the same was complained to the Inspector of Factories under Ex.P10 and since he has not taken any steps, the union filed a writ petition before the Hon'ble High Court, Madras and Ex.P11 is the copy of the judgment given by the Hon'ble High Court, Madras. A perusal of Ex.P11 reveals that the petitioner's union complained about introduction of computerised time attendance system and the Hon'ble High Court, Madras after discussing all the material aspects, dismissed the writ by stating follows:-

> "The union have agreed for the introduction of TAS system of attendance by a settlement. Therefore, it is too late for the petition to question the same. ... . Therefore, it cannot be said that the action of the second respondent is illegal and without the authority of law. Even otherwise, under section 111A of the Factories Act, 1948, every workman employed in the factory is entitled to obtain from the occupier the information relating to workers' health and safety at work. As per section 111A (iii), he can also represent to the Inspector directly or through his representative the matter of inadequate provision for protection of his health and safety in the factory. Therefore, in case of violation of any of the provisions of the Factories Act or Rules made thereunder, it was always open to the workmen or through their representative to complain to the appropriate authority and seek redressal.".

The Hon'ble High Court, Madras in Ex.P11 has given direction to the petitioner's union to approach appropriate authority for their relief. The petitioner has not filed any document to prove that his union approached the concerned authority for their remedy or preferred the appeal as against the judgment of the Hon'ble High Court, Madras. In the above circumstances, Ex.P11 becomes final and it binds the petitioner's union and consequently, the contention of the learned counsel for the petitioner that the introduction of attendance/automatic lock/reject system is illegal, cannot be accepted. Hence, the respondent has proved through Ex.R21 and Ex.R22 that the petitioner has unauthorised absent as mentioned above.

11. The contention of the learned counsel for the petitioner is that the petitioner has been working under the respondent company for the past 12 years, but in the enquiry proceedings, without taking sufficient time, the respondent has finished the entire enquiry proceedings and closed it and therefore with intention and motivation, the respondent management has been acted against the petitioner and hence, the enquiry was not conducted fair and proper manner.

12. On the other hand, the contention of the learned counsel for the respondent is that the enquiry was conducted in a free and fair manner by giving full opportunity to the petitioner to disprove the charges and there is absolutely no lacuna in the enquiry proceedings and it has been conducted in a free and fair manner after following all the requisites of principles of natural justice. He further submitted that the petitioner during the enquiry proceedings admitted the charges and based on his admission, the petitioner was found guilty of the charges.

13. RW.1 has marked the copy of the enquiry proceedings as Ex.R17. On perusal of Ex.R17, it is seen that the entire proceedings beginning with charge sheeting the petitioner to issuing 2nd show cause

notice to him were done in Tamil, the enquiry officer explained the entire proceedings in detail to the petitioner in Tamil, the enquiry officer offered permission to the petitioner to engage defense assistance of his choice and in the enquiry proceedings, the petitioner has categorically admitted the fact he had remained unauthorisedly absent, as stated in the charge-sheet and he himself requested the enquiry officer to close the enquiry after recording his admission. The petitioner signed in the enquiry proceedings to that effect. Hence the petitioner was found guilty of the charges and based on the enquiry report, the second show cause notice was issued under Ex.R19 intimating the punishment of dismissal and the petitioner gave his reply to the second show cause notice, dated 23-6-2009 under Ex.R20 and since his reply was found unsatisfactory, the dismissal order was sent to the petitioner.

14. The learned counsel for the petitioner has submitted that in the enquiry proceedings, the H.R. Executive had prepared all the charges and commanded and demanded this petitioner to obtain his signature over the same, but on the first day of the said enquiry, the petitioner contested the same effectively but there is no opportunity for the same, whereas, on 23-9-2012 the said H.R. Executive threatened the petitioner and obtained signature over the said prepared charges forcibly, such act is absolutely illegal and violation of principles of natural justice.

15. But the petitioner has not produced any evidence to show that his signature was obtained in the enquiry proceedings forcibly. Further after sending the second show cause notice under Ex.R19, the petitioner has sent his explanation under Ex.R20 and in Ex.R20, the petitioner has not stated anything about the alleged threat made by the H.R. Executive during the course of enquiry proceedings. In fact, the petitioner in his explanation under Ex.R20 admitted about the unauthorised absence and prayed leniency before the respondent management. In the above circumstances, the said version is only an after-thought, which cannot be accepted.

16. The contention of the learned counsel for the petitioner is that the general procedure at the enquiry would normally be the appointment of enquiry officer has to be informed to the petitioner by the respondent management but the respondent management neither inform nor appoint any enquiry officer for conducting the enquiry, but the H.R. Executive himself acted as an enquiry officer and conducted the domestic enquiry without following the principles of natural justice.

17. It is true that the H.R. Executive of the respondent management was acted as enquiry officer. When the petitioner himself admitted the charges framed against him, this court need not see the other aspects. Hence, there is nothing wrong in conducting the domestic enquiry by the H.R. Executive of the respondent management. In the above circumstances, I find that the enquiry conducted by the respondent management is fair and proper.

18. The further contention of learned counsel for the petitioner is that the respondent had not followed section 33(2)(b) of Industrial Disputes Act, 1947 and had dismissed the petitioner unlawfully and as per the said section, the employer may pass an order of dismissal or discharged and at the same time make an application for approval of the action taken by him and if the approval is not granted under section 33 (2)(b) of Industrial Disputes Act, 1947, the order of the dismissal becomes ineffective from the date it was passed and failure to make application under the said section would render the order of dismissal inoperative. In order to support his claim, he relied upon the following decision.

2002(1) L.L.N. 639:

Jaipur Zila Sahakari Bhoomi Vikas Bank Limited, Vs. Ram Gopal Sharma and Others:

"Industrial Disputes Act, 1947, section 33(2)(b), proviso (as amended in 1956) - If approval is not granted under section 33(2)(b) or failure to make application under section 33(2)(b) seeking approval, renders order of dismissal inoperative -Dismissal becomes ineffective from date it was passed - Employee becomes entitled to wages from date of dismissal.".

19. On the other hand, the learned counsel for the respondent has submitted that the petitioner is not a member of Hindustan Unilever Employees' Union and the petitioner is no nexus connection with the disputes which is pending before the conciliation Officer and the industrial dispute was raised individual capacity of the petitioner under section 2-A of Industrial Disputes Act.

20. PW.2, the President of the Hindustan Unilever Employees' Association in his evidence has deposed that the petitioner was a member in their association and the copy of the admission application was marked through him as Ex.P7. As per Ex.P7 the petitioner was a member in Hindustan Unilever Employees' Union from 6-3-2008. The petitioner as PW.1 has marked the receipt issued by Hindustan Unilever Employees' Union as Ex.P1, dated 1-5-2009. On perusal of Ex.P1, it is seen that the date '1-5-2009' has been corrected manually.

21. The learned counsel for the respondent has submitted that the receipt, dated 7-1-2011 issued in I.D. No.3/2012 bears the receipt No.554, but the receipt, dated 4-1-2011 issued in I.D. No. 5/2012 bears the receipt number 597 and the genuine receipts can only be in ascending order and not be in descending order from

597 on 4-1-2001 to 554 on 7-1-2011 and a closer look at those subscription slips issued by the said union to the petitioner as well as the petitioners in I.D. No.3/2012 and I.D. No.5/2012 will expose the fabrication of those receipts and will lead to an irresistible conclusion that they have been forged.

22. On perusal of the receipt No.597 filed in I.D. No. 5/2012, which was marked as Ex.P1 reveals that originally the receipt was issued on 12-1-2011 and subsequently, it has been changed as 4-1-2011 and if the date was 12-1-2011, definitely the receipt can be in ascending order *i.e.,* receipt No. 554, dated 7-1-2011 (I.D. No.3/2012) and the receipt No. 597, dated 12-1-2011. The manual correction in Ex.P1 will not be in any way helpful to the case of the petitioner, even PW.2, the President of the Hindustan Unilever Employees' Union himself has appeared before this court and deposed that PW.1 was a member in their union, but PW.2 has failed to explain properly about the said contradictions.

23. The learned counsel for the respondent has submitted that PW.2, the union leader was extensively cross-examined on the membership of the petitioner and his attention was brought to non-production certified register containing names of the members of union as required in Trade Unions Act, the non-production of audited balance sheet of the union with full details on subscription collected from its members and PW.2 could not give any convincing answers to these questions in cross-examination.

24. It is true that the register containing names of the members of the union and the audited balance sheet of the union have not been produced on the side of the petitioner. Eventhough PW.2 in his cross-examination has stated that they are maintaining the said registers and they are ready to produce the same, if required, when the membership of the petitioner is challenged by the respondent, it is the duty of the petitioner to produce the above documents before this court. But the petitioner has not taken any serious steps to produce the abovesaid documents. In the above circumstances, the oral evidence of PW.2 and the documentary evidence of Ex.P1 and Ex.P7 is not in anyway helpful to the case of the petitioner that he was the member in the Hindustan Unilever Employees' Union from 2008.

25. The learned counsel for the respondent has submitted that the petitioner has never pleaded and proved as to what was the dispute that was involved in the other two references to the conciliation and how the petitioner is connected to the said dispute. He further submitted that the present dispute is only an individual dispute under section 2-A of Industrial Disputes Act unsupported and unsponsored by any union, whereas the two conciliation proceedings referred to by the petitioner were industrial disputes raised by the unions under section 2(k) concerning general working conditions of all the workers. He further submitted that the disputes raised in the previous conciliation proceedings by Hindustan Unilever Employees' Union had absolutely no nexus or connection with the petitioner. In order to support his claim, he relied upon the following decisions:-

CDJ 1962 SC 016:

Digwadih Colliery Versus Ramji Singh:

"The respondent's case set out in this application appears to be that, because there was Reference No.60 of 1959 pending between the appellant and some of its employees, section 33(2) applied, but, unless it is known as to what was the nature of the dispute pending in the said reference, it would plainly be impossible to decide whether the respondent is a workman concerned within the meaning of section 33(2). In his application, the respondent has made no averment about the nature of the said dispute; and so the tribunal was clearly in error in holding that the broad construction of section 33(2) automatically led to the conclusion that the respondent was the workman concerned and could, therefore, claim the protection of section 33(2).".

1992 I.L.L.J. 837 Madras:

Rajagopal and Others Vs. EDI Party Limited and another:

"10. In the instant case, even assuming that the first petitioner was a member of the union which had sponsored the dispute, the first petitioner was not bound by the award that was passed; nor was he directly connected with the dispute already pending before the Labour Court. In view of the aforesaid reasoning that the first petitioner cannot be construed as the workman concerned and if the first petitioner happened to be the workman not concerned with the dispute for the reasons stated above, there was no need for the employer to seek permission as contemplated under section 33(2)(b) of the Act. Simply because the first petitioner happened to be the member of the union, which sponsored the dispute, the petitioner cannot claim that he is a workman concerned with reference to the dispute which was then pending unless there is some other common feature in the disputes which were pending and the claim of the petitioner."

26. It is true that the present industrial dispute was filed by an individual name of the petitioner. If the conciliation has not been completed within 45 days, the individual can file the claim statement directly before the Labour Court as per amended section 2-A of Industrial Disputes Act, 1947. Accordingly, the petitioner has filed the present industrial dispute before this court. Hence, I find nothing wrong in filing the present industrial dispute by the petitioner individually.

27. Further the learned counsel for the respondent himself has admitted that there were two conciliation proceedings pending at the time of termination of the petitioner, but his only defence is that the disputes raised in the previous conciliation proceedings by the union, had absolutely no nexus or connection with the petitioner.

28. In this regard, the learned counsel for the petitioner has submitted that the dispute was raised for charter of demands in I.D. No.1065/2008/LO(C)/AIL and the another dispute was raised for changing of service condition, since the respondent management without giving 9-A notice to the union changed their service condition including the petitioner herein in I.D. No.1458/2009/LOC/AIL. In order to prove the same, PW.1 has marked the copy of the notice of enquiry sent to the respondent management as Ex.P3 and Ex.P4. It is already decided that the petitioner has not proved that he is a member of Hindustan Lever Employees' Union. Hence, Ex.P3 and Ex.P4 would not support the case of the petitioner. The learned counsel for the respondent has not challenged the documents under Ex.P3 and Ex.P4. In the above circumstances, when the conciliation officer has conducted the conciliation in respect of the issues with regard to the service conditions of the employees and charter of demands pertaining to the respondent management, this court has to see whether approval under section 33(2)(b) of Industrial Disputes Act in this case is legally required or not. Eventhough the petitioner is an employee under the respondent management, he has not proved that he is a member in Hindustan Unilever Employees' Union, who has raised the said issues. Hence, section 33(2)(b) of Industrial Disputes Act is not applicable to the petitioner, as such the respondent management has rightly decided that they need not pay the wages for one month and need not file an application to the authority before which the proceeding is pending for approval of the action taken by them.

29. The learned counsel for the respondent submitted that the issue of chronic absenteeism has become a very serious issue in the respondent's factor, crippling its production and productivity and disturbing its work schedules and manpower allotment and the high percentage of unauthorised absenteeism clearly indicates that workers are taking their employment casually and the leniency shown by the respondent in the past in not taking stringent disciplinary action was also an encouraging factor. The learned counsel for the respondent relied upon the following decisions to support his claim:-

CDJ 2009 S.C. 1194:

Union of India Vs. Others Versus Bishamber Das Dogra:

"Admittedly, the respondent employee has not completed the service of six years and had been imposed punishment three times for remaining absent from duty. On the fourth occasion when he remained absent for 10 days without leave, the disciplinary proceedings were initiated against him. ... ...

... There is nothing on record to show any explanation for such repeated misconduct or absenteeism. The court/tribunal must keep in mind that such indiscipline is intolerable so far as the disciplined force is concerned. The respondent was a guard in CISF. No attempt had ever been made at any stage by the respondent - employee to explain as to what prejudice has been caused to him by non-furnishing of the enquiry report. ... ... Appeal filed by the respondent employee was decided by the Statutory Appellate Authority giving cogent reasons. The facts of the case did not present special features warranting any interference by the court in limited exercise of its powers of judicial review. In such a fact situation, we are of the view that the High Court should not have interfered with the punishment order passed by the disciplinary authority on such technicalities.".

CDJ 2007 MHC 3398:

G. Vijayan Vs. The Presiding Officer, Labour Court, Salem and Another:

"This is a classic instance wherein misplaced sympathy has been shown by the Labour Court, having found that the domestic enquiry was conducted in a fair manner. This practice of showing misplaced sympathy or generosity or compassionate ground to review the quantum of punishment is held to be impermissible by hierarchy of judgments of the Apex Court. It is also clear that the apex court has held that only in cases where the punishment awarded is shockingly disproportionate to the charge proved, the court can interfere to reduce the punishment. .. .. The award of the labour in ordering reinstatement of the appellant with service benefits, however, without back wages is not on proper and sound reasoning as found by the learned single judge. In view of the same, the writ appeal fails and the same is dismissed.".

2006-1-L.LJ-55 (Madras) :

O. Krishnan Vs. Management of Dheeran Chinnamalai Transport Corporation:

"In the present case, however, apart from unauthorised absence for which disciplinary proceedings were being initiated, the disciplinary authority has relied upon the fact that on pevious occasions also the petitioner had remained

unauthorisedly absent. The disciplinary authority had also considered the fact that there has been several other punishments imposed upon the petitioner on numerous occasions and considering all these aspects, the disciplinary authority had come to the conclusion that the person was to be dismissed. The Labour Court on independent consideration has also come to the very same conclusion and has held that punishment of dismissal was justified in the peculiar facts and circumstances of the case, in the absence of any patent illegality in such orders, it is difficult for the High Court to come to any different conclusion and to interfere with the punishment.".

2010-4-LLJ 245:

Indian Coffee Board Vs. The Presiding Officer:

"Not only has no evidence/document whatsoever of illness has been produced but no particulars of the serious prolonged illness, if any, suffered by the respondent No. 2 workman have been stated. ... . Court recently in Union of India *Vs.* Bishamber Das Dogra MANU/SC/0887/2009 has reiterated that absenteeism is a gross violation of discipline. It goes without saying that such absenteeism of a workman can paralyse the working/ functioning of the employer. The Labour Court ignored the facts which stated one in the face in the facts of the present case.".

30. Now we have to see whether the punishment of dismissal is proportionate to the charges levelled against the petitioner for unauthorised absence. The petitioner in the disciplinary proceedings has admitted the charges and prayed leniency for the unauthorised absence. Apart from the above, according to the respondent, the petitioner was an employer under them from 8-4-1996 and he was chronic absentee from January 2002 only. Prior to 2002, there was no remarks or misconduct by the petitioner. Of course the history sheet of the workman shows that the period of absence from 2002 to 2008 are very much long period of absence, which cannot be considered leniently. About nine spell of unauthorised leave taken by the petitioner were admitted by the petitioner, which were also warned in time and he was also suspended once on 29-3-2005.

These lapses are very serious in nature and hence considering the habit of long unauthorised absence, I feel that he cannot be reinstated into service. However, the punishment of dismissal from the service is disproportionate one, but I am of the opinion that he can be awarded monetary compensation in the circumstances of the case. Hence, I feel that the monetary compensation only will be the better solution in this case to settle this disputes between the parties, which would meet the ends of justice. Considering the service of the petitioner and starving family members depending the workman for livelihood, he can be awarded a sum of ₹ 2,00,000 in *lump sum* towards compensation. Accordingly, this point is answered.

32. In the result, the industrial dispute is partly allowed and the petitioner is not entitled for reinstatement and the other benefits. However, he is entitled for ₹ 2,00,000 (Rupees two lakhs only) towards monetary compensation. No costs. Time for three months.

Typed to my dictation, corrected and pronounced by me in the open court on this the 30th day of November 2012.

T. MOHANDASS,
Presiding Officer, Labour Court,
Puducherry.

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List of witnesses examined for the petitioner :

PW.1 — 28-9-2012 — R. Azhagappan

PW.2 — 12-10-2012 — Ezhumalai

List of witnesses examined for the respondent :

RW.1 — 25-10-2012 — Arokia Berdila Anand

List of exhibits marked for the petitioner :

Ex.P1 — Receipt for admission in the union, dated 1-5-2009.

Ex.P2 — Copy of the punishment order, dated 11- 7-2009.

Ex.P3 — Copy of notice sent by the conciliation officer, dated 10-12-2008.

Ex.P4 — Copy of the notice sent by the conciliation officer, dated 14-7-2009.

Ex.P5 — Dispute raised by the petitioner before the conciliation officer, dated 8-11-2011.

Ex.P6 — Copy of the notice of enquiry sent to the respondent, dated 6-12-2011.

Ex.P7 — Copy of the admission application for joining in the union, dated 6-3-2008.

Ex.P8 — Copy of the letter, dated 13-7-2009 sent by the petitioner to respondent.

Ex.P9 — Copy of the conditions of service for change, dated 21-10-2010.

Ex.P10 — Copy of the letter, dated 20-2-2009 sent by the petitioner to the Inspector of Factories.

Ex.P11 — Copy of the judgment of Hon'ble High Court, dated 8-6-2010.

Ex.P12 — Copy of the letter, dated 13-5-2008 sent to the respondent by union.

List of exhibits marked for the respondent :

Ex.R1 — Authorisation letter, dated 24-10-2012

Ex.R2 — Copy of the show cause notice to petitioner, dated 9-10-2002.

Ex.R3 — Copy of the apology letter given by the petitioner, dated 12-10-2002.

Ex.R4 — Copy of the caution letter sent by the respondent, dated 15-10-2002.

Ex.R5 — Copy of the show cause notice sent to the petitioner, dated 3-2-2003.

Ex.R6 — Copy of the charge sheet issued to the petitioner, dated 15-5-2003.

Ex.R7 — Copy of the letter given by the petitioner's father, dated 26-6-2003.

Ex.R8 — Copy of the letter given by petitioner's brother to Enquiry Officer, dated 8-1-2004.

Ex.R9 — Copy of the charge sheet, dated 25-2-2004

Ex.R10 — Copy of the warning letter given to the petitioner, dated 24-11-2004.

Ex.R11 — Copy of the punishment order, dated 29-3-2005.

Ex.R12 — Copy of the charge sheet given to the petitioner, dated 1-12-2006.

Ex.R13 — Copy of the charge sheet given to the petitioner, dated 23-6-2007.

Ex.R14 — Copy of the punishment order, dated 17-7-2007.

Ex.R15 — Copy of the advise letter given to the petitioner.

Ex.R16 — Copy of the letter given by the petitioner admitting the charges, dated 29-2-2008.

Ex.R17 — Copy of the enquiry proceedings

Ex.R18 — Copy of the domestic enquiry in Tamil, dated 26-10-2008.

Ex.R19 — Copy of the second show cause notice, dated 1-6-2009.

Ex.R20 — Copy of the reply given by the petitioner, dated 23-6-2009.

Ex.R21 — Computerised statement of percentage of authorised and unauthorised absenteeism.

Ex.R22 — Copy of the extract of computerised muster roll from January 2007 to July 2009.

T. MOHANDASS,
Presiding Officer, Labour Court,
Puducherry.

GOVERNMENT OF PUDUCHERRY

LABOUR DEPARTMENT

(*G.O. Rt. No. 73/Lab./AIL/J/2013, dated 17th May 2013)*

NOTIFICATION

Whereas, an award in I.D. No. 3/2012, dated 30-11-2012 of the Labour Court, Puducherry in respect of the industrial dispute between the Managing Director, M/s. Hindustan Unilever Limited, Detergent Factory, Puducherry and its workman Thiru N. Krishnan, over his non-employment has been received;

Now, therefore, in exercise of the powers conferred by sub-section (1) of section 17 of the Industrial Disputes Act, 1947 (Central Act XIV of 1947) read with the notification issued in Labour Department's G. O. Ms. No. 20/91/Lab./L, dated 23-5-1991, it is hereby directed by Secretary to Government (Labour) that the said award shall be published in the official gazette, Puducherry.

(By order)

S. THAMMU GANAPATHY,
Under Secretary to Government (Labour).

BEFORE THE LABOUR COURT AT PUDUCHERRY

Present : Thiru T. MOHANDASS, M.A., M.L.,
Presiding Officer, Labour Court.

Friday, the 30th day of November 2012.

I.D. No. 3/2012

N. Krishnan . . Petitioner

Vs.

The Managing Director,
Hindustan Unilever Limited,
Detergent Factory,
Puducherry-605 102. . . Respondent

This industrial dispute coming on 26-11-2012 for final hearing before me in the presence of Thiru R.T. Shankar, Advocate for the petitioner, Thiruvalargal L. Sathish and D. Dayanithi, Advocates for the respondent, upon hearing both sides, upon perusing the case records, after having stood over for consideration till this day, this court passed the following:

AWARD

The petitioner has filed a case before the conciliation officer as against the dismissal order passed by the respondent and since the said case has not been disposed off within 45 days, this industrial

dispute is filed by the petitioner before this court under section 2-A of Industrial Disputes (Amendment) Act, 2010 (24 of 2010)

2. The petitioner, in his claim statement, has averred as follows:

The petitioner was working as permanent employee in the respondent company from 25-9-1997 and he was a member in the Hindustan Unilever Employees Union.

The respondent raised a false allegation against the petitioner that from 1-3-2009 to 18-2-2010 he has taken leave without approval from the management and the enquiry was conducted, for which, the H.R. Manager was appointed as enquiry officer. The enquiry officer has not conducted the enquiry in a fair manner and had acted as management representative and had conducted the enquiry in biased manner. Further in the enquiry, the petitioner was threatened to accept the charges in writing by the enquiry officer. In the enquiry, the enquiry officer had refused to give sufficient opportunity to the petitioner and had refused to mark even a single document on the part of the petitioner. The petitioner was also not permitted to examine even a single witness on his side. Based on the report of the enquiry officer, the petitioner was dismissed from service from 17-3-2011. The dismissal of the petitioner is in violation of principles of natural justice and contrary to the provisions of Industrial Disputes Act.

Further on the date when he was terminated, two conciliation proceedings concerning their union were pending before the conciliation officer. Hence, the respondent management has not followed section 33(2)(b) of Industrial Disputes Act. In the above circumstances, the present industrial dispute is filed for his reinstatement along with other benefits.

3. In the counter statement, the respondent has stated as follows:

The petitioner was employed as general worker with effect from 25-9-1997. The petitioner was a chronic absentee taking leave without authorisation. The petitioner continued to be erratic in his attendance and remained unauthorisedly absent on various dates from the year 1999 onwards frequently and continued to be erratic in his attendance and remained unauthorisedly absent on various dates from March 2009. When the petitioner did not turn up for employment till 18-2-2010, the respondent issued a detailed charge sheet on 19-2-2010, which was received by the petitioner, but he failed to submit any reply. Then the enquiry was conducted and in the enquiry proceedings, the petitioner categorically admitted the fact that he had remained unauthorisedly absent from March 2009 to 18-2-2010. The enquiry officer submitted his detailed report on 19-7-2010 by coming to the conclusion that the petitioner was guilty of the charges levelled against him. The respondent immediately issued a second show cause notice along with the enquiry report to the petitioner on 11-1-2011, which was received by him, but he did not give any reply for the second show cause notice. Hence, the respondent terminated the petitioner *vide* order dated 17-3-2011, which was received by the petitioner. The petitioner was removed from the services for a grave misconduct of chronic, habitual absenteeism, which was admitted by him in an independent and impartial domestic enquiry. Hence, the dismissal of the petitioner from service is fully justified. Therefore, the respondent prays for dismissal of the industiral dispute.

4. On the side of the petitioner, PW.1 and PW.2 were examined and Ex.P1 to Ex.P11 were marked. On the side of the respondent, RW.1 was examined and Ex.R1 to Ex.R9 were marked.

5. *The point for determination is:*

Whether the petitioner can be considered for reinstatement in service with accrued benefits?

6. *On the point:*

According to the petitioner, he was working as permanent employee in the respondent company from 25-9-1997 and the respondent raised a false allegation against him that from 1-3-2009 to 18-2-2010 he has taken leave without approval from the management and the enquiry was conducted, for which, the H.R. Manager was appointed as enquiry officer and the enquiry officer has not conducted the enquiry in a fair manner and had acted as management representative and had conducted the enquiry in biased manner and in the enquiry, he was threatened to accept the charges in writing by the enquiry officer. In order to prove his contention, the petitioner was examined as PW.1.

7. *Per contra,* the contention of the respondent is that the petitioner was a chronic absentee taking leave without authorisation and he continued to be erratic in his attendance and remained unauthorisedly absent on various dates *i.e.* 101.5 days in 1999, 149 days in 2000, 68.5 days from January 2001 to May 2001, 93 days from June 2001 to December 2001, 169.5 days in 2002, 151 days in 2003, 159.5 days from January 2004

to December 2004, 117.5 days from January 2005 to August 2005, from 26-9-2005 to 24-10-2005, 203.5 days from January 2006 to December 2006, 53.5 days from January 2006 to December 2006, 245.5 days from January 2007 to March 2008, 206.5 days from January 2008 to December 2008 and hence they issued a detailed charge sheet, which was received by him, but he failed to reply for the same and then the enquiry was conducted and in the enquiry proceedings, the petitioner categorically admitted the fact that he had remained unauthorisedly absent from March 2009 to 18-2-2010 and based on the report of the enquiry officer he was dismissed from service. In order to prove his contention, the H.R Executive was examined as RW.1.

8. In order to prove his claim, RW.1 has marked the copy of the attendance record for the period from January 2007 to March 2011 as Ex.R7 and the computerised statement of overall percentage of authorised and unauthorised absenteeism from January 2007 to Septmber 2012 as Ex.R8. A perusal of Ex.R8 reveals that the percentage of both authorised and unauthorised absenteeism as on December 2012 is 26.49%.

9. In this regard, the learned counsel for the petitioner has submitted that in the year 2002, a long term settlement was signed by the trade unions, it has been agreed by both the parties that the computerised time attendance system will be implemented and therefore the respondent management introduced a time attendance system in the year of 2003 and after that in the year 2005, the respondent management without consultation of any union's or any terms of employment or leave rules or standing order clause unilaterally introduced the attendance/automatic lock/reject system and this was disputed by the trade union. The learned counsel for the petitioner further submitted that the petitioner union filed a writ petition before the Hon'ble High Court, Madras and the Hon'ble High Court dismissed the said petition stating that they can raise the said dispute before the industrial tribunal for remedy.

10. On the side of the petitioner, the President of the Hindustan Unilever Employees Association was examined as PW.2. PW.2 in his evidence has deposed that he was working as Skilled Operator in the respondent company and the petitioner is the member of his Association and Ex.P7 is the application given by the petitioner for joining his association. PW.2 further deposed that the respondent company introduced computerised time attendance system and whenever the workmen registered their names, it was programmed that registration will be directly rejected and utilising the said programme and with a view to victimise the workers, the registration was locked and the petitioner complained that his presence was not registered in the computer and the same was complained to the Inspector of Factories, under Ex.P10 and since he has not taken any steps, the union filed a writ petition before the Hon'ble High Court, Madras and Ex.P11 is the copy of the Judgment given by the Hon'ble High Court, Madras. A perusal of Ex.P11 reveals that the petitioner's union complained about introduction of computerised time attendance system and the Hon'ble High Court, Madras after discussing all the material aspects, dismissed the writ by stating follows:

> "The union have agreed for the introduction of TAS system of attendance by a settlement. Therefore, it is too late for the petition to question the same. .... Therefore, it cannot be said that the action of the second respondent is illegal and without the authority of law. Even otherwise, under section 111-A of the Factories Act, 1948, every workman employed in the factory is entitled to obtain from the occupier the information relating to workers' health and safety at work. As per section 11-A (iii), he can also represent to the Inspector directly or through his representative the matter of inadequate provision for protection of his health and safety in the factory. Therefore, in case of violation of any of the provisions of the Factories Act or Rules made thereunder, it was always open to the workmen or through their representative to complain to the appropriate authority and seek redressal.".

The Hon'ble High Court, Madras in Ex.P11 has given direction to the petitioner's union to approach appropriate authority for their relief. The petitioner has not filed any document to prove that his union approached the concerned authority for their remedy or preferred the appeal as against the judgment of the Hon'ble High Court, Madras. In the above circumstances, Ex.P11 becomes final and it binds the petitioner's union and consequently, the contention of the learned counsel for the petitioner that the introduction of attendance/automatic lock/reject system is illegal, cannot be accepted. Hence, the respondent has proved through Ex.R7 and Ex.R8 that the petitioner has unauthorised absent as stated above.

11. The contention of the learned counsel for the petitioner is that the petitioner has been working under the respondent company for the past 13 years, but in the enquiry proceedings, without taking sufficient time, the respondent has finished the entire enquiry proceedings and closed it and therefore with

intention and motivation, the respondent management has been acted against the petitioner and hence, the enquiry was not conducted fair and proper manner.

12. On the other hand, the contention of the learned counsel for the petitioner is that the enquiry was conducted in a free and fair manner by giving full opportunity to the petitioner to disprove the charges and there is absolutely no lacuna in the enquiry proceedings and it has been conducted in a free and fair manner after following all the requisites principles of natural justice. He further submitted that the petitioner during the enquiry proceedings admitted the charges and based on his admission, the petitioner was found guilty of the charges.

13. RW.1 has marked the copy of the enquiry proceedings as Ex.R4. On perusal of Ex.R4, it is seen that the entire proceedings beginning with charge sheeting the petitioner to issuing 2nd show cause notice to the him were done in Tamil, the enquiry officer explained the entire proceedings in detail to the petitioner in Tamil, the enquiry officer offered permission to the petitioner to engage defense assistance of his choice and in the enquiry proceedings, the petitioner has categorically admitted the fact that he had remained unauthorisedly absent, as stated in the charge sheet and he requested the enquiry officer to close the enquiry. The petitioner signed in the enquiry proceedings to that effect. Hence the petitioner was found guilty of the charges and based on the enquiry report, the second show cause notice was issued under Ex.R6 intimating the punishment of dismissal and since the petitioner did not submit any reply, the dismissal order under Ex.R9 was sent to the petitioner.

14. The learned counsel for the petitioner has submitted that in the enquiry proceedings, the H.R. Executive had prepared all the charges and commanded and demanded this petitioner to obtain his signature over the same, such act is absolutely illegal and violation of principles of natural justice.

15. But the petitioner has not produced any evidence to show that his signature was obtained in the enquiry proceedings forcibly. In the above circumstances, the said version is only an after thought, which cannot be accepted.

16. The contention of the learned counsel for the petitioner is that the general procedure at the enquiry would normally be the appointment of enquiry officer has to be informed to the petitioner by the respondent management but the respondent management neither informed nor appointed any enquiry officer for conducting the enquiry, but the H.R. Executive himself acted as an enquiry officer and conducted the domestic enquiry without following the principles of natural justice

17. It is true that the H.R. Executive of the respondent management was acted as enquiry officer. When the petitioner himself admitted the charges framed against him, this court need not see the other aspects. Hence, there is nothing wrong in conducting the domestic enquiry by the H.R. Executive of the respondent management. In the above circumstances, I find that the enquiry conducted by the respondent management is fair and proper.

18. The further contention of learned counsel for the petitioner is that the respondent had not followed section 33(2)(b) of Industrial Disputes Act, 1947 and had dismissed the petitioner unlawfully and as per the said section, the employer may pass an order of dismissal or discharged and at the same time make an application for approval of the action taken by him and if the approval is not granted under section 33 (2) (b) of Industrial Disputes Act, 1947, the order of the dismissal becomes ineffective from the date it was passed and failure to make application under the said section would render the order of dismissal inoperative. In order to support his claim, he relied upon the following decision:

2002(1) L.L.N. 639:

Jaipur Zila Sahakari Bhoomi Vikas Bank Limited, Vs. Ram Gopal Sharma and others:

"Industrial Disputes Act 1947, S33(2)(b), Proviso (as amended in 1956) - If approval is not granted under section 33(2)(b) or failure to make application under S33(2)(b) seeking approval, renders order of dismissal inoperative -Dismissal becomes ineffective from date it was passed - Employee becomes entitled to wages from date of dismissal.".

19. On the other hand, the learned counsel for the respondent has submitted that the petitioner is not a member of Hindustan Unilever Employees Union and the petitioner is no nexus connection with the disputes which is pending before the conciliation officer and the industiral dispute was raised individual capacity of the petitioner under section 2-A of Industiral Disputes Act.

20. PW.2, the President of the Hindustan Unilever Employees Association in his evidence has deposed that the petitioner was a member in their association and the copy of the admission application was marked through him as Ex.P7. As per Ex.P7 the petitioner was a member in Hindustan Unilever Employees Union from 6-3-2008. The petitioner as PW.1 has marked the receipt issued by Hindustan Unilever Employees Union as Ex.P1, dated 7-1-2011. On perusal of Ex.P1, it is seen that the original date has been strike off and corrected as 7-1-2011 manually.

21. The learned counsel for the respondent has submitted that the receipt dated 7-1-2011 issued in this case bears the receipt No. 554, but the receipt dated 4-1-2011 issued in I.D. No. 5/2011 bears the receipt number 597 and the genuine receipts can only be in ascending order and not be in descending order from 597 on 4-1-2001 to 554 on 7-1-2011.

22. On perusal of Ex.P1 reveals that originally the receipt was issued on 12-1-2011 and subsequently, it has been changed as 7-1-2011 and if the date was 12-1-2011, indefinitely the receipt can be in ascending order *i.e*. receipt No.554 dated 12-1-2011 (in this case) and the receipt No.597 dated 12-1-2011. The manual correction in Ex.P1 will not be in any way helpful to the case of the petitioner, even PW2, the President of the Hindustan Unilever Employees Union himself has appeared before this court and deposed that PW.1 was a member in their union and PW.2 also failed to explain properly the above contradictions.

23. The learned counsel for the respondent has submitted that PW.2, the union leader was extensively cross examined on the membership of the petitioner and his attention was brought to non-production certified register containing names of the members of union as required in Trade Unions Act, the non-production of audited balance sheet of the union with full details on subscription collected from its members and PW.2 could not give any convincing answers to these questions in cross examination.

24. It is true that the register containing names of the members of the union and the audited balance sheet of the union have not been produced on the side of the petitioner. Eventhough, PW.2 in his cross-examination has stated that they are maintaining the said registers and they are ready to produce the same, if required, when the membership of the petitioner is challenged by the respondent, it is the duty of the petitioner to produce the above documents before this court. But the petitioner has not taken any serious steps to produce the above said documents. In the above circumstances, the oral evidence of PW.2 and the documentary evidence of Ex.P1 and Ex.P7 is not in anyway helpful to the case of the petitioner that he was the member in the Hindustan Unilever Employees Union from 2008.

25. The learned counsel for the respondent has submitted that the petitioner has never pleaded and proved as to what was the dispute that was involved in the other two references to the conciliation and how the petitioner is connected to the said dispute. He further submitted that the present dispute is only an individual dispute under section 2-A of Industrial Disputes Act unsupported and unsponsored by any union, whereas the two conciliation proceedings referred to by the petitioner were industrial disputes raised by the unions under section 2(k) concerning general working conditions of all the workers. He further submitted that the disputes raised in the previous conciliation proceedings by Hindustan Unilever Employees Union had absolutely no nexus or connection with the petitioner. In order to support his claim, he relied upon the following decisions:

CDJ 1962 SC 016 :

Digwadih Colliery Vs. Ramji Singh:

"The respondent's case set out in this application appears to be that, because there was Reference No. 60 of 1959 pending between the appellant and some of its employees, S 33(2) applied, but, unless it is known as to what was the nature of the dispute pending in the said reference, it would plainly be impossible to decide whether the respondent is a workman concerned within the meaning of S33(2). In his application, the respondent has made no averment about the nature of the said dispute; and so the tribunal was clearly in error in holding that the broad construction of S33(2) automatically led to, the conclusion that the respondent was the workman concerned and could, therefore, claim the protection of S33(2).".

1992 ILLJ 837 Madras :

Rajagopal and Others Vs. EDI Party Limited and another:

"10. In the instant case, even assuming that the first petitioner was a member of the union which had sponsored the dispute, the first petitioner was not bound by the award that was passed; nor was he directly connected with the dispute already pending before the Labour Court. In view of the aforesaid reasoning that the first petitioner cannot be construed as the workman concerned and if the first petitioner happened to be the workman not concerned with the dispute for the reasons stated above, there was no need for the employer to seek permission as contemplated under section 33(2)(b) of the Act. Simply because the first petitioner happened to be the member of the Union, which sponsored the dispute, the petitioner cannot claim that he is a workman concerned with reference to the dispute which was then pending unless there is some other common feature in the disputes which were pending and the claim of the petitioner.".

26. It is true that the present industrial dispute was filed by an individual name of the petitioner. If the conciliation has not been completed within 45 days, the individual can file the claim statement directly before the Labour Court as per amended section 2-A of Industrial Dispute Act, 1947. Accordingly, the petitioner has filed the present industrial dispute before this court. Hence, I find nothing wrong in filing the present industrial dispute by the petitioner individually.

27. Further the learned counsel for the respondent himself has admitted that there were two conciliation proceedings pending at the time of termination of the petitioner, but his only defence is that the dispute raised in the previous conciliation proceedings by the union had absolutely no nexus or connection with the petitioner.

28. In this regard, the learned counsel for the petitioner has submitted that the dispute was raised for changing of service condition, since the respondent management without giving 9-A Notice to the union changed their service condition including the petitioner herein in I.D. No.1458/2009/LO(C)/AIL. and the another dispute was raised for declaration of paid holidays in violation of 12(3) settlement in I.D. No.2563/2010/LO(C)/AIL. In order to prove the same, PW.1 has marked the copy of the notice of enquiry sent to the respondent management as Ex.P3 and Ex.P4. It is already decided that the petitioner has not proved that he is a member of Hindustan Lever Employees Union. Hence, Ex.P3 and Ex.P4 would not support the case of the petitioner. The learned counsel for the respondent has not challenged the documents under Ex.P3 and Ex.P4. In the above circumstances, when the conciliation officer has conducted the conciliation in respect of the issues with regard to the service conditions of the employees and declaration of paid holidays pertaining to the respondent management, this court has to see whether the approval under section 33(2)(b) in this case is legally required or not. Eventhough the petitioner is an employee under the respondent management, he has not proved that he is a member in Hindustan Unilever Employees Union, who has raised the said issues. Hence, section 33(2)(b) of Industrial Disputes Act is not applicable to the petitioner, as such the respondent management has rightly decided that they need not pay the wages for one month and need not file an application to the authority before which the proceeding is pending for approval of the action taken by them.

29. The learned counsel for the respondent submitted that the issue of chronic absenteeism has become a very serious issue in the respondent's factory, crippling its production and productivity and disturbing its work schedules and manpower allotment and the high percentage of unauthorised absenteeism clearly indicates that workers are taking their employment casually and the leniency shown by the respondent in the past in not taking stringent disciplinary action was also an encouraging factor. The learned counsel for the respondent relied upon the following decisions to support his claim:

CDJ 2009 SC 1194:

Union of India Vs. Others Vs. Bishamber Das Dogra:

"Admittedly, the respondent employee has not completed the service of six years and had been imposed punishment three times for remaining absent from duty. On the fourth occasion when he remained absent for 10 days without leave, the disciplinary proceedings were initiated against him.. . . . . .

. . . There is nothing on record to show any explanation for such repeated misconduct or absenteeism. The Court/Tribunal must keep in mind that such indiscipline is intolerable so far as the disciplined force is concerned. The respondent was a guard in CISF. No attempt had ever been made at any stage by the respondent- employee to explain as to what prejudice has been caused to him by non-furnishing of the enquiry report.

. . . . . . Appeal filed by the respondent employee was decided by the Statutory Appellate Authority giving cogent reasons. The facts of the case did not present special features warranting any interference by the Court in limited exercise of its powers of judicial review. In such a fact situation, we are of the view that the High Court should not have interfered with the punishment order passed by the disciplinary authority on such technicalities."

CDJ 2007 MHC 3398:

G. Vijayan Vs. The Presiding Officer, Labour Court, Salem and Another:-

"This is a classic instance wherein misplaced sympathy has been shown by the Labour Court, having found that the domestic enquiry was conducted in a fair manner. This practice of showing misplaced sympathy or generosity or compassionate ground to review the quantum of punishment is held to be impermissible by hierarchy of judgments of the Apex Court. It is also clear that the Apex Court has held that only in cases where the punishment awarded is shockingly disproportionate to the charge proved, the

Court can interfere to reduce the punishment. .. .. The award of the Labour in ordering reinstatement of the appellant with service benefits, however, without back wages is not on proper and sound reasoning as found by the learned single Judge. In view of the same, the writ appeal fails and the same is dismissed."

2006-1-LLJ-55 (Madras):

O. Krishnan Vs. Management of Dheeran Chinnamalai Transport Corporation :

"In the present case, however apart from unauthorised absence for which disciplinary proceedings were being initiated, the disciplinary authority has relied upon the fact that on pevious occasions also the petitioner had remained unauthorisedly absent. The disciplinary authority had also considered the fact that there has been several other punishments imposed upon the petitioner on numerous occasions and considering all these aspects, the disciplinary authority had come to the conclusion that the person was to be dismissed. The Labour Court on independent consideration has also come to the very same conclusion and has held that punishment of dismissal was justified in the peculiar facts and circumstances of the case. In the absence of any patent illegality in such orders, it is difficult for the high court to come to any different conclusion and to interfere with the punishment.'".

2010-4-LLJ 245:

Indian Coffee Board Vs. The Presiding Officer-

"Not only has no evidence/document whatsoever of illness has been produced but no particulars of the serious prolonged illness, if any, suffered by the respondent No.2 workman have been stated. ... . Court recently in Union of India *Vs.* Bishamber Das Dogra MANU/ SC/0887/2009 has reiterated that absenteeism is a gross violation of discipline. It goes without saying that such absenteeism of a workman can paralyze the working/functioning of the employer. The Labour Court ignored the facts which starte one in the face in the facts of the present case.".

30. Now we have to see whether the punishment of dismissal is proportionate to the charges levelled against the petitioner for unauthorised absence. The petitioner in the disciplinary proceedings has admitted the charges and prayed leniency for the unauthorised absence. Apart from the above, according to the respondent, the petitioner was an employer under them from 25-9-1997 and he was chronic absentee from 1999 only. Prior to 1999, there was no remarks or misconduct by the petitioner. Of course the history sheet of the workman shows that the period of absence from 1999 to 2009 are very much long period of absence, which cannot be considered leniently. More than ten spells of unauthorised leave taken by the petitioner were admitted by the petitioner, which were also warned in time and he was also suspended for five times. These lapses are very serious in nature and hence considering the habit of long unauthorised absence, I feel that he cannot be reinstated into service. However, the punishment of dismissal from the service is disproportionate one, but I am of the opinion that he can be awarded monetary compensation in the circumstances of the case. Hence, I feel that the monetary compensation only will be the better solution in this case to settle this disputes between the parties, which would meet the ends of justice. Considering the service of the petitioner and starving family members depending the workman for livelihood, he can be awarded a sum of ₹ 2,00,000 in lump sum towards compensation. Accordingly, this point is answered.

31. In the result, the industrial dispute is partly allowed and the petitioner is not entitled for reinstatement and the other benefits. However, he is entitled for ₹ 2,00,000 (Rupees two lakhs only) towards monetary compensation. No costs. Time for three months.

Typed to my dictation, corrected and pronounced by me in the open court on this the 30th day of November, 2012.

T. MOHANDASS,
Presiding Officer, Labour Court,
Puducherry.

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List of witnesses examined for the petitioner :

PW.1 — 28-9-2012 — N. Krishnan

PW.2 — 12-10-2012 — Ezhumalai

List of witness examined for the respondent :

RW.1 — 25-10-2012 — Arokia Berdila Anand

List of exhibits marked for the petitioner :

Ex.P1 — Receipt for admission in the union, dated 4-1-2011.

Ex.P2 — Copy of the dismissal order, dated 17-3-2011.

Ex.P3 — Copy of notice sent by the Conciliation Officer, dated 14 -7-2009.

Ex.P4 — Copy of the notice sent by the Cociliation Officer, dated 2-1-2010.

Ex.P5 — Dispute raised by the petitioner before the Conciliation Officer, dated 8-11-2011.

Ex.P6 — Copy of enquiry sent to the respondent, dated 6-12-2011.

Ex.P7 — Copy of the admission application for joining in the union, dated 6-3-2008.

Ex.P8 — Copy of the letter dated 13-5-2008 sent to the Inspector of Factories.

Ex.P9 — Copy of the conditions of service for change, dated 21-10-2010.

Ex.P10 — Copy of the letter sent to the Inspector of Factories, dated 20-2-2008 by the union.

Ex.P11 — Copy of the judgment of Hon'ble High Court, dated 8-6-2010.

List of exhibits marked for the respondent :

Ex.R1 — Copy of the charge sheet, dated 19-2-2010

Ex.R2 — Copy of the enquiry proceedings marked through PW.1 in cross

Ex.R3 — Authorisation letter, dated 24-10-2012

Ex.R4 — Copy of the domestic enquiry proceedings

Ex.R5 — Copy of the enquiry report, dated 19-7-2010

Ex.R6 — Copy of the second show cause notice to petitioner, dated 1-1-2011.

Ex.R7 — Copy of the extract of computerised muster roll.

Ex.R8 — Computerised statement of overall percentage of authorised and unauthorised absenteeism.

Ex.R9 — Copy of the punishment order, dated 31-10-2006.

T. Mohandass,
Presiding Officer, Labour Court,
Puducherry.

GOVERNMENT OF PUDUCHERRY

CHIEF SECRETARIAT (WORKS)

(*G.O. Ms. No. 17, dated 21st May 2013)*

NOTIFICATION

On attaining the age of superannuation, Thiru D. Sundaram, Assistant Engineer, Public Health Division, Public Works Department, Puducherry is admitted into retirement with effect from the afternoon of 31-5-2013.

(By order)

N. Sumathi,
Joint Secretary to Government (Works).

GOVERNMENT OF PUDUCHERRY

LABOUR DEPARTMENT

(*G.O. Rt. No. 74/Lab./AIL/J/2013, dated 22nd May 2013)*

NOTIFICATION

On the recommendations of the High Court of Judicature at Madras and in exercise of the powers conferred by sub-sections (1) and (2) of section 7A and by sub-section (2) of section 7 of the Industrial Disputes Act, 1947 (Central Act 14 of 1947) read with rule 5 of the Industrial Disputes (Central) Rules, 1957 and in supersession of the notifications issued in G.O. Ms. No. 9/AIL/Lab./J/2012, dated 10th August 2012 of the Labour Department, Government of Puducherry and published in the Official Gazette No. 35, dated 28th August 2012 and G.O. Ms. No. 6/AIL/Lab./J/2012, dated 23rd January 2013 of the Labour Department, Government of Puducherry and all other notifications issued in this behalf, save as respects things done or omitted to be done before such supersession, the Lieutenant-Governor, Puducherry has been pleased to appoint Thiru T. Mohandass, Presiding Officer of the Labour Court, Puducherry as the Presiding Officer of the Industrial Tribunal-*cum*- Labour Court for the whole of the Union territory of Puducherry for the purposes of the said Act, with immediate effect.

2. This notification shall come into force with effect from the date of publication in the official gazette, Puducherry.

(By order of the Lieutenant-Governor)

S. Thammu Ganapathy,
Under Secretary to Government (Labour).

GOVERNMENT OF PUDUCHERRY

LABOUR DEPARTMENT

(*G.O. Rt. No. 75/Lab./AIL/J/2013, dated 22nd May 2013)*

NOTIFICATION

In exercise of the powers conferred by sub-sections (1) and (2) of section 7A and by sub-section (1) of section 7 of the Industrial Disputes Act, 1947 (Central Act 14 of 1947) read with rule 5 of the Industrial Disputes (Central) Rules, 1957 and in supersession of the notifications issued in G.O. Ms. No. 24/AIL/Lab./J/2011, dated 16th November 2011 of the Labour Department, Government of Puducherry and published in the Official Gazette No. 48, dated 29th November 2011 and G.O. Ms. No. 6/AIL/Lab./J/2012, dated 23-1-2013 of the Labour Department, Government of Puducherry and all other notifications issued in this behalf, save as respect things done or omitted to be done before such supersession, the Lieutenant-Governor, Puducherry has been pleased to reconstitute and redesignate the Labour